(3)

No. 89-994

Supreme Court, U.S.
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CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1989

WEST VIRGINIA UNIVERSITY HOSPITALS, INC.,

Petitioner,

v.

ROBERT CASEY, Governor of the Commonwealth of Pennsylvania, JOHN F. WHITE, Secretary of the Pennsylvania Department of Public Welfare, and DAVID S. FEINBERG, Director of the Bureau of Policy and Program Development of the Pennsylvania Department of Public Welfare,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JOINT APPENDIX

Robert T. Adams*
McGUIRE, WOODS, BATTLE & BOOTHE
One James Center
Richmond, Virginia 23219
Telephone: (804) 775-1000
Counsel for Petitioner

John G. Knorr, II*
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
Telephone: (717) 783-1471
Counsel for Respondents

*Counsel of Record

PETITION FOR CERTIORARI FILED DECEMBER 22, 1989
CERTIORARI GRANTED FEBRUARY 26, 1990

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA (HARRISBURG)

CIVIL DOCKET FOR CASE #: 86-CV-955

WEST VIRGINIA UNIVERSITY HOSPITALS, INC.
v. CASEY, ET AL

Date	No.	Proceedings
		MEMO AND ORDER
11/30/88	98	1) The court declares the Com. of Pa's medicaid prospective payment system as it applies to W.VA U. Hospital is violative of federal law. 2) The Ct. declares the Com. of Pa's medicaid administrative appeals system as it applies to W.VA U. Hospital is violative of federal law. 3) The Ct. declares plntf's 14th amend. equal protection rights have been violated as a result of its treatment under the Com. of Pa's medicaid prospective payment system. 4) Defts. shall within 90 days of the entry of judg. formulate a methodology and a medicaid prospective payment system for W. VA U. Hospital consistent w/& in conformity w/fed. law as discussed in the memo. 5) Defts. shall within 90 days of the entry of judg. formulate an adequate & meaningful medicaid administrative appeals or

exception system for W. VA U. Hospital.

6) Defts. shall permit W VA U. Hospital to utilize the new appeals or exception system to challenge its reimbursements from the date this action was commenced.

7) Mtns. for reconsideration shall not be filed. However, the Ct. will entertain mtns. to clarify this order to ensure it is consistent w/the body of the memo.

8) Plntf's request for atty. fees pursuant to 42 USC 1988 is granted. Counsel for the parties shall attempt to agree on the amt. of said fees. On or before 12/14/88 counsel shall submit a joint fee proposal to the Ct., or if no agreement can be reached, counsel shall separately file fee proposals.

9) Judg. will be entered upon the Ct.'s determination of appropriate attys. fees

10) Defts. mtn. to file suppl. briefs is denied. cc: All counsel, all judges, Sec.

12/14/88	99	JOINT FEE PROPOSAL - of counsel re: atty.'s fees & costs w/exhs. (c/s) amsb
12/15/88	101	DECLARATION - unsworn of Atty. Stover (c/s)
01/30/89	105	MEMO - of Ct. AND ORDER - IT IS HEREBY ORDERED THAT: 1.) Pltf. is awarded $500,000 in attorney's fees and

costs pursuant to 42 U.S.C. Sec. 1988, and 2.) The Clerk of Court is directed to enter judgment in accordance with the foregoing award and in accordance with the order of Nov. 30, 1988 (Doc. of Rec. No. 980; and 3.) The Clerk of Court shall close the file. (R) cc: Stover, Macon, Foerster, Bartels, Ct. 4 copies & All Judges & Orig. to Security. gtg

01/31/89	106	JUDGMENT - IT IS ORDERED AND ADJUDGED that judgment be and is hereby entered in favor of the pltf. as to Attorneys Fees and Costs in the amt. of $500,000 and against the defts. pursuant to 42 U.S.C. 1988. (R) cc: Stover, Macon, Foerster, Bartels, Ct. 4 copies all judges & Orig. to Sec.
01/31/89	107	JUDGMENT - IT IS ORDERED AND ADJUDGED that judgment be and is hereby entered in favor of the pltf. and against the defts. as follows: 1.) the Ct. declares the Commonwealth of Pa's medicaid prospective payment system as it applies to West Virginia University Hospital is violative of federal law. 2.) the Ct. declares the Commonwealth of Pa's medicaid administrative appeals system as it applies to West Virginia University Hospital is violative of federal law. 3.) the Court declares pltf's Fourteenth Amendment equal

protection rights have been violated as a result of its treatment under the Commonwealth of Pa's medicaid prospective payment system.

4.) Defts. shall, w/in (90) days of the entry of judgment, formulate (and seek approval of same from the appropriate federal authority) a methodology and a medicaid prospective payment system for West Virginia University Hospital consistent with and in conformity with federal law and discussed in the memorandum of November 30, 1988.

5.) Defts. shall within ninety (90) days of the entry of judgment, formulate (and seek approval of same from the appropriate federal authority) an adequate and meaningful (as those terms are used in the memorandum of November 30, 1988 medicaid administrative appeals or exception system for West Virginia University Hospital;

6.) Defts. shall permit West Virginia University Hospital to utilize the new appeals or exception system to challenge its reimbursements from the date this action was commenced. (R) cc: Stover, Macon, Foerster, Bartels, Ct. 4 copies all judges & Orig. to Security.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

DOCKET NO. 89-5165

WEST VIRGINIA UNIVERSITY HOSPITALS, INC. v.
CASEY, ET AL.

Date	Proceedings
09/05/89	Signed Opinion. Judgment affirming, etc.; reversing; vacating, etc. with two-thirds of WVUH's costs on appeal are taxed against the appellants.
09/18/89	Petition for Rehearing of WVUH.
10/05/89	Petition for Rehearing of WVUH Denied.
10/18/89	Application by WVUH, Inc. for Attorneys' Fees in the amount of $134,763.97 and an award of Expenses in the amount of $7,510.27, filed. w/service.
10/30/89	Answer by Appellants to the application for attorneys' fees, filed. w/serv.
11/03/89	Reply by WVUH, Inc. to the Objections filed by Appellants to application for attorneys' fees, Received only.
11/7/89	Order (Becker, Stapleton and Rosenn Cir. Judges) Ordering that counsel for appellants supplement their answer within ten days from the date of this order with copy to counsel for the appellees, with the following:

1) A detailed and specific analysis of how much reduction in hours and fees should be made under Hensley v. Eckerhart, 461 U.S. 424 (1983), in light of appellants' contention that WVUH lost on three issued (paragraph 7 of answer) that were significant, and appellee's reply thereto.

2) Whether it is appellants' contention that there should also be a reduction in fees because the lawyers applied too much time to certain matters or too many lawyers were engaged in the performance of a particular service and if so the specific items to which objection is made, the reduction requested as to each and the reasons therefor.

3) The specific items to which objection is taken because the services were rendered in the DC, the reasons why this Ct. may not award fees as to WVUH's efforts to enforce compliance with the DC's judgment in light of appellee's reply the specific items to which obj. is made for services rendered between the time of the DC's judgment and the perfection of the appeal, and the specific amount of hours and sums that reasonably should be deducted from WVUH's claim for fees.

4) Specific entries in the exhibits that are objected to because of non-specificity and the reasons why those items require greater detail and the nature of the specificity requested. The appellees shall have ten days after receipt of the appellar.''s supplemental submissions to reply, filed.

11/20/89	Supplement to Appellants' Answer to Appellee's Application for Counsel Fees, filed.
11/30/89	Motion by WVUH, Inc. to Amend Application for Attorneys' Fees and Expenses, filed.
11/30/89	Reply of WVUH, Inc. to appellants' Supplemental Objections to Application for fees and expenses, filed.
12/06/89	Answer by Appellants to appellee's motion to amend application for attorneys' fees and expenses, filed.
01/16/90	Notice of Filing Petition for Certiorari by Robert Casey, Gov. of Penna., etc. on January 3, 1990 at Supreme Court. No. 89-1078, filed. There is a separate petition for certiorari filed by WVUH at SC No. 89-994
03/12/90	Opinion Sur Motion for Attorneys' Fees and Costs (Becker, Stapleton and Rosenn, C.JS), filed. For Publication.
03/12/90	Order On Application for Attorney Fees (Chief Deputy Clerk) Granting the amended application in part and awarding attorney fees, etc. It is further ordered that the foregoing award of attorney fees and expenses is made without prejudice to plaintiff's right to make supplemental application to the District Court for reasonable fees and expenses to which it may be entitled in the post-judgment proceedings in that Court, filed.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WEST VIRGINIA UNIVERSITY HOSPITALS, INC., Plaintiff	:	
	:	CIVIL ACTION
vs.	:	
	:	NO. CV-86-0955
RICHARD L. THORNBURGH, et al, Defendants	:	JUDGE RAMBO

STIPULATION

This case involves complex questions of hospital and governmental accounting which require detailed preparation of preliminary studies in order to facilitate meaningful discussions between the parties and to provide for efficient advancement of the case before the Court. Plaintiff has been diligently working to complete work with respect to such undertakings but has been unable to finalize its studies at this juncture. Counsel for Plaintiff believe that such matters can be consummated by December 15, 1986, at which time it is the intention of the parties to schedule conferences to review the status and nature of the claims raised by the Complaint. To facilitate these processes, the parties hereby stipulate as follows:

(1) That the time for Defendants to answer, move or otherwise plead with respect to the Complaint shall be extended indefinitely until such time as

Plaintiff's counsel file a status report with the Court indicating that Plaintiff is prepared to have the case proceed; and

(2) That the scheduling order of this court filed September 15, 1986 is suspended in its entirety as to this case until such time as counsel for Plaintiffs file a status report with the Court indicating that the case is ready to proceed; and

(3) Plaintiff's counsel shall provide a status report to the Court on or before January 15, 1987 with respect to matters relating to this case.

Counsel for the parties respectfully request the confirmation of this Stipulation by the Court.

/s/ Jerome T. Foerster
JEROME FORRESTER, ESQUIRE
OFFICE OF ATTORNEY GENERAL
Commonwealth of Pennsylvania
Strawberry Square
Harrisburg, PA 17120

/s/ Jack M. Stover
JACK M. STOVER, ESQUIRE
SHEARER, METTE, EVANS & WOODSIDE
1801 North Front Street
P.O. Box 729
Harrisburg, PA 17108-0729

/s/ Sylvia H. Rambo
JUDGE RAMBO
11/18/86

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRCT OF PENNSYLVANIA

TESTIMONY OF MR. THOMAS MANAK
(May 3, 1988 Transcript)

[178]

DIRECT EXAMINATION AS TO QUALIFICATIONS

BY MS. KREBS:

Q Mr. Manak, what is your present position?

A I am the Director of Financial Services for the Central Region of Coopers and Lybrand.

Q What is Coopers and Lybrand?

A Coopers and Lybrand is an international and national public accounting firm.

[179]

Q I am sorry?

A It is a national and international public accounting firm.

Q And what do you do as the Director of Financial Services of the Central Region?

A I am responsible for all financial consulting engagements that we are engaged to do out of that office, out of our Chicago office. Those engagements may be within our central region or throughout the country.

Q What does the central region include?

[179 (cont'd)]

A It encompasses a nine state area in the Midwest.

Q A what?

A A nine state area in the Midwest.

Q What types of financial or what types of engagements -- I think you used that word -- do you do for Coopers?

A It is a very wide variety of engagements including reimbursement, financial consulting in general, mergers and acquisitions, financial forecasts for hospitals and other acute care and long term care providers.

Q What kind of work do you do specifically in the area of reimbursement?

A In the area of reimbursement, we analyze Medicare and Medicaid regulations by consulting to our clients, assist in appeals to the Provider Reimbursement Review Board, assist them in trying to improve the payments from the third [180] parties.

Q Do you have occasion in that position that you now hold to review payment methodologies for Medicaid programs in different states?

A Yes, I do.

Q Have you in fact done that?

[180 (cont'd)]

A As part of Medicaid engagements and other types of consulting engagements for various clients, in order to understand how they get paid, it is necessary to analyze the various different payment methodologies by the large payers which would include Medicare, Medicaid and other commercial payers.

Q Have you specifically analyzed or sought to familiarize yourself with the Medicaid payment methodologies in different States?

A Yes, I have

Q Could you identify for us what those State methodologies are or the States in which those methodologies apply?

A THE COURT: May I have the question again?

BY MS. KREBS:

Q Could you please identify for us the State methodologies for Medicaid payment with which you are familiar?

A I am confused about the question you asked. Are you [181] asking the State methodologies or the States in which we have done work which included analyzing payment methodologies?

Q Let's me try that question first. In what States have you worked in which you have had to evaluate and familiarize yourself with payment methodologies?

[181 (cont'd)]

A I will give you a representative list. It includes California, Arizona, New Mexico, West Virginia, Virginia, Pennsylvania, District of Columbia, Maryland, and there are other States.

Q Have you familiarized yourself with the Medicaid payment methodologies of different States?

A Yes, I have.

Q What State -- what Medicaid payment methodologies are you familiar with?

A There are various different types of payment methodologies. Each State can do it somewhat differently. In California, for example --

THE COURT: Are we really interested in the other States?

MS. KREBS: Your Honor, I am trying to establish a foundation for his expert testimony.

THE COURT: He has already stated that he named various States, and he is familiar with the methodologies of those States.

MS. BARTELS: Your Honor, I will stipulate that he [182] is testifying as an expert generally in hospital reimbursement. If they want to develop an expertise in the Pennsylvania system, I think they will need to go further. But in general, as far as hospital finance and hospital reimbursement, we have no objection to his testifying as an expert in that area.

MS. KREBS: Fine.

[182 (cont'd)]

BY MS. KREBS:

Q Mr. Manak, were you retained by West Virginia University Hospital to help it with this case?

A Yes.

Q What specifically were you asked to do?

A We were asked to do a number of things. We were asked to analyze the payment methodology in the State of Pennsylvania for out-of-state hospitals and in-state hospitals. We were to look at the payment amounts that were received by the hospital and also what the payment would be if they were an in-state hospital.

Q Have you reviewed any documents, Mr. Manak, to help you with that assignment?

A Yes, I have.

Q Mr. Manak, what I would like to do is hand you several different documents and ask you whether you have reviewed these documents. Mr. Manak, I am handing you a document. Could you [183] identify it please and tell the Court whether you have reviewed it?

A This is the Defendants' Answers to Plaintiff's First Set of Interrogatories in this case. Yes, I have reviewed it.

Q Mr. Manak, there are multiple sets here. When I say multiple sets, there are multiple documents bound within that document?

[183 (cont'd)]

A Also in the document is Defendants' Answer to Plaintiff's Second Set of Interrogatories.

Q Have you reviewed that document, sir?

A Yes, I have. There is also the Defendants' Supplementary Answers to Plaintiff's Second Set of Interrogatories.

Q Have you reviewed that document, sir?

A Yes, I have. There is also the Defendants' Second Set of Supplementary Answers to Plaintiff's Second Set of Interrogatories.

Q Mr. Manak, have you reviewed that document?

A Yes, I have.

MS. KREBS: I would like to identify this at this point and ask that the Court admit these documents into the record of this proceeding. They are all documents that were generated during the discovery process and the course of this trial. They have been sworn to under oath.

[184]

MS. BARTELS: No objection, Your Honor.

THE COURT: It is admitted. Do we have a document number?

[184 (cont'd)]

MS. KREBS: I guess we would mark it. We will mark it as Plaintiff Exhibit 68.

(Plaintiff Exhibit 68 was introduced and admitted into evidence.)

BY MS. KREBS:

Q Mr. Manak, I am going to hand you a series of documents which are from the Defendants and ask you whether you have reviewed these documents. I have got a fairly lengthy list here. What I would ask you to do is identify for the Court what the document is, and then I will ask you whether you have reviewed it.

THE COURT: And the number.

(List of Medicaid cases seen by WVUH for 1984-85 showing amount paid was introduced as Defendants Exhibit 73.)

BY MS. KREBS:

Q I am handing you now Defendants Exhibit 73.

A This is a listing of cases that were seen by West Virginia University Hospital of Pennsylvania Medicaid patients grouped by diagnostic related group for fiscal year 1984-1985. It has other data on that, but it is all in order of DRG.

[185]

Q And what does it show specifically?

[185 (cont'd)]

A It shows the amount paid to West Virginia University Hospital for each DRG, the total charges related to that DRG for those patients, the hospital average length of stay, the statewide -- the Pennsylvania statewide average length of stay, the number of cases and the relative value.

Q Have you reviewed this document prior to coming into this courtroom?

A Yes, I did.

Q Did you review it for the work you have done as part of this engagement?

A Yes, I have.

(List of Medicaid cases seen by WVUH for 1985-1986 showing amount paid was introduced as Defendants Exhibit 74.)

BY MS. KREBS:

Q I am handing you, Mr. Manak, Defendants Exhibit 74. What is this document, sir?

A This document is identical to the Defendants Exhibit 73 except it is for fiscal year 1985-1986.

Q Have you reviewed that document, sir?

A Yes, I have.

[185 (cont'd)]

Q And also with respect to the work you have done in this case?

A Yes.

[186]

(List of Medicaid cases seen by WVUH for 1986-1987 showing amount paid was introduced as Defendants Exhibit 75.)

BY MS. KREBS:

Q I am handing you the Defendants Exhibit 75. What is this document, sir?

A Again, this data is the same type of data, the same categories, by DRG for West Virginia University Hospital for Pennsylvania Medicaid patients seen by the hospital but for fiscal year 1986-1987.

Q Have you reviewed this document, Mr. Manak, for the work that you did in this case?

A Yes, I have.

(Out-of-state Medicaid Expenditures in order of amounts paid was introduced as Defendants Exhibit 80.)

BY MS. KREBS:

Q I am handing you Defendants Exhibit 80. Would you identify it, please?

[186 (cont'd)]

A This exhibit is identified as out-of-state Medicaid expenditures or service year, fiscal year 1984-1985. It shows by facility for out-of-state facilities total dollars paid, total days, total charges and average payment, case mix index, average length of stay and the number of cases -- Pennsylvania Medicaid cases that are seen by each one of those hospitals.

[187]

Q Each of these hospitals that is listed on the far left-hand corner is an out-of-state hospital?

A Yes, it is.

Q And have you reviewed this document, sir?

A Yes, I have.

(Out-of-state Medicaid Expenditures ranked by cases was introduced as Defendants Exhibit 81.)

BY MS. KREBS:

Q I am handing you, Mr. Manak, Defendants Exhibit 81. Could you identify it, please?

A This is similar to Defendants Exhibit 80, the same type of data for out-of-state hospitals that see Pennsylvania Medicaid patients, but for --

Q Did I give them to you out of order?

[187 (cont'd)]

A No, this is a duplicate.

Q Okay. Let me hand you this one then, sir. I am sorry.

THE COURT: 81 is withdrawn?

MS. KREBS: 81 appears to be duplicate of 80. I will have to check, Your Honor.

MS. BARTELS: Your Honor, I believe we can clarify that. One is ranked by cases, and one is ranked by dollars paid. They are the same information ranked in different orders.

MS. KREBS: I will come back to that, Your Honor.

BY MS. KREBS:

[188]

Q Can you based on your review, Mr. Manak, explain what the difference is between those two?

A Yes. The difference is in rank order. The data is the same. It is just a different sort of the data -- one by number of cases with the highest volume first, and in Defendants Exhibit 80 it is in order of total dollars paid to the out-of-state facility.

Q Have you reviewed both Exhibits 81 and Exhibit 80 in preparing for your work here?

A Yes, I have.

[188 (cont'd)]

(Information in re: PA Medicaid cases seen by out-of-state hospitals with amounts paid was introduced as Defendants Exhibit 82.)

BY MS. KREBS:

Q Could you identify for me Exhibit 82, Defendants Exhibit 82?

A Defendants Exhibit 82 is again information regarding Pennsylvania Medicaid cases seen by out-of-state hospitals for fiscal year 1985-1986 in order of total dollars paid.

Q Did you review that document, Mr. Manak?

A Yes, I did.

(Information in re: PA Medicaid cases ranked by number of Medicaid cases was introduced as Defendants Exhibit 83.)

[189]

BY MS. KREBS:

Q I am handing you, Mr. Manak, Defendants Exhibit 83. Would you identify it, please?

A Defendants Exhibit 83 is similar to Exhibit 82 with the exception that it is in order of number of cases -- number of Pennsylvania Medicaid cases seen by out-of-state hospitals.

[189 (cont'd)]

Q Did you review Defendants Exhibit 83 in preparing for the work that you have done in this assignment and for the testimony that you are about to give?

A Yes, I did.

(Information in re: out-of-state Medicaid expenditures ranked by amounts paid for 1986-1987 was introduced as Defendants Exhibit 84.)

BY MS. KREBS:

Q I am handing you, Mr. Manak, Defendants Exhibit 84. Could you tell us what it is, please?

A This exhibit is again similar data, out-of-state Medicaid expenditures paid to out-of-state -- Pennsylvania Medicaid expenditures paid to out-of-state hospitals for fiscal year 1986-1987 ranked in order of total dollars paid.

Q Did you review Defendants Exhibit 84 in the course of your work here and as a basis for the testimony you may give?

A Yes, I did.

(1986-1987 Medicaid expenditures ranked by number of cases was introduced as Defendants Exhibit 85.)

[190]

BY MS. KREBS:

[190 (cont'd)]

Q I am handing you Defendants Exhibit 85, Mr. Manak. What is it?

A Defendants Exhibit 85 is similar to -- is for fiscal year 1986-87 Pennsylvania Medicaid expenditures paid to out-of-state hospitals in rank order by number of cases seen by those hospitals.

Q Did you review this document in preparation -- in your preparation for this case and as a basis for your testimony?

A Yes, I did.

(Information in re: expenditures 1984-1985 in-state hospitals was introduced as Defendants Exhibit 86.)

BY MS. KREBS:

Q I am handing you Defendants Exhibit 86. Could you identify it, please?

A Defendants Exhibit 86 is information regarding Pennsylvania Medicaid expenditures for fiscal year 1984-85 to in-state hospitals providing information regarding total dollars paid, total days, total charges, the average payment, case mix index of the patients seen, average length of stay and number of cases.

Q Did you review this document, Mr. Manak, for your work here and for whatever testimony you may give here?

A Yes, I did.

[191]

(Information in re: expenditures for 1984-1985 in order of number of cases seen by the hospital was introduced as Defendants Exhibit 87.)

BY MS. KREBS:

Q I am handing you Defendants Exhibit 87. What is that, Mr. Manak?

A This exhibit is similar to Exhibit 86 again for fiscal year '84-'85 payments to in-state hospitals by Pennsylvania Medicaid in order of number of cases seen by those hospitals.

Q Did you review this document, sir, for your assignment and for the testimony you may give?

A Yes, I did.

(Medicaid expenses paid to hospitals in other States for the years 1984 through 1987 were introduced as Defendants Exhibit 93.)

BY MS. KREBS:

Q I am handing to you, Mr. Manak, Defendants Exhibit 93. What is that, sir?

A This exhibit is Medicaid expenditures paid to hospitals in other states by the Pennsylvania Medicaid system for inpatient cases. And it is an aggregate the dollars paid to hospitals in other States by State the number of hospitals in that State and the number of cases that were

[191 (cont'd)]

seen by those hospitals. The first page is for fiscal year '84-'85. The second page is for fiscal year '85-'86. The third page is [192] fiscal year '86-'87.

Q Did you review the Defendants Exhibit 93 as part of your assignment, and is it a basis for the testimony that you may give later?

A Yes, it is.

MS. BARTELS: I think there is a confusion. We have that document I believe as 93.

MS. KREBS: I thought I had said 93.

THE COURT: I have 93.

MS. BARTELS: I thought you just said 90 a moment ago. I wanted to clarify it was 93.

BY MS. KREBS:

Q I ask you Mr. Manak, if you had reviewed this document?

A Yes.

(Listing dated 7/85 of in-state hospital rates was introduced as Defendants Exhibit 95.)

BY MS. KREBS:

Q I hand you Defendants Exhibit 95. Could you identify it, please?

[192 (cont'd)]

A Defense Exhibit 95 is a listing of in-state hospitals, what group they are in, the group rate, the hospital's specific rate and blended rate, monthly capital they are paid, monthly medical education, overall cost to charge ratio, case mix index.

[193]

Q For which hospitals?

A For in-state hospitals. The heading on this is July, 1985. And I think it says hospital table information.

Q Did you review this document, sir, for your assignment, and is it a basis for the testimony that you may offer?

A Yes, it is.

(Information in re: in-state hospital rates, 1/86, was introduced as Defendants Exhibit 96.)

BY MS. KREBS:

Q Mr. Manak, this is Defendants Exhibit 96. Could you please identify it?

A This is similar information to Defendants Exhibit 95. Again in-state hospital information regarding the payment to those hospitals, and the heading is January, 1986 hospital table information.

Q Did you review this document, sir, and is it a basis for any testimony you may give later?

[193 (cont'd)]

A Yes, it is.

Q Yes to both questions?

A Yes.

(Hospital table dated 10/86 listing payments to in-state hospitals was introduced as Defendants Exhibit 98.)

BY MS. KREBS:

Q Mr. Manak, I hand you Defendants Exhibit 98. Would you identify that, sir?

[194]

A Yes. Again, this is similar information to the previous two exhibits. The heading is October, and I am assuming it says 1986 hospital information table. It is dated Wednesday, September 24, 1986.

Q What is this?

A It is a listing of information regarding what the payment would be to in-state hospitals.

Q Did you review this document, sir?

A Yes, I did.

Q Is it a basis for any testimony you may give today?

[194 (cont'd)]

A Yes, it is.

(Information in re: PA Medicaid expenditures for in-state hospitals paid 1985-86 with amounts paid was introduced as Defendants Exhibit 88.)

BY MS. KREBS:

Q I hand you Defendants Exhibit 88.

A Defendants Exhibit 88 is information regarding Pennsylvania Medicaid expenditures paid to in-state hospitals for fiscal year 1985-86 listing the name of the hospital, the total dollars paid, the total days, average payment, case mix index, average length of stay and cases in order by total dollars paid.

Q This is again in-state hospitals?

A In-state hospitals.

Q Mr. Manak, did you review this document?

[195]

A Yes, I did.

Q Is it a basis -- was it a basis for assignment and any basis for testimony you may give today?

A Yes, it is.

[195 (cont'd)]

(Information in re: PA Medicaid expenditures or in-state hospitals for 1984-1986 with number of cases was introduced as Defendants Exhibit 89.)

BY MS. KREBS:

Q Mr. Manak, this is Defendants Exhibit 89. What is this document?

A This document, the date is the same as in the previous exhibit with the rank order being by the number of cases seen by each in-state hospital.

Q Did you review this exhibit, Mr. Manak, as part of your work in this assignment, and is it a basis for any testimony you may give later today?

A Yes, it is.

Q To both questions?

A Yes.

(List of total dollars paid to in-state hospitals ranked by total dollars paid for 1986-1987 was introduced as Defendants Exhibit 90.)

BY MS. KREBS:

Q Mr. Manak, this is Defendants Exhibit 90. Could you identify it, please?

[196]

A Defendants Exhibit 90 is a listing of in-state hospitals, the total dollars paid to them, total days, total charges, average payment, case mix index, average length of stay and cases for fiscal year 1986-87 in rank order by total dollars paid.

Q Did you review this exhibit for your work in this case?

A Yes, I did.

Q Is it a basis for any testimony you may give today?

A Yes, it is.

(List of in-state hospitals ranked by cases seen for 1986-1987 was introduced as Defendants Exhibit 91).

BY MS. KREBS:

Q I hand you Defendants Exhibit 91. Please identify it.

A This exhibit is the same data that was on Defendants Exhibit 90 in rank order by number of cases seen by the individual in-state hospitals.

Q Mr. Manak, did you review this document for your work in this case?

A Yes, I did.

[196 (cont'd)]

Q Is it a basis for any testimony you may give later?

A Yes.

MS. KREBS: With the Court's permission, I would move all of the Defendants Exhibits which I have just recited into evidence together with -- the other document is already in. [197] I would also ask counsel to stipulate that what is now marked as Plaintiff Exhibit 68 are all sworn responses to the interrogatories that were propounded by Plaintiff in this case to the Commonwealth and to stipulate further that the exhibits whose numbers I have just recited are all documents that were given by the Commonwealth of Pennsylvania to West Virginia University Hospital pursuant to requests for production during the discovery process.

THE COURT: Any problem with the stipulation?

MS. BARTELS: I believe other than the fact I have not yet seen 68 and I want to just make sure it represents just the answers to the interrogatories, if that is the case, I don't have an objection to admitting that. It is not listed separately, but we understood it was on the list, and they were going to be separate items.

As far as the exhibits, we have no question about stipulating them into evidence. We did produce them as part of discovery. I would ask though that the characterization of the exhibits not stand as the final characterization as we prepared the exhibits. Any impression Mr. Manak has about some of the information may have come from the Department or he may have assumed certain information. We will have witnesses later who will identify how the documents were prepared and what the source of the documents are.

[197 (cont'd)]

THE COURT: The documents are admitted.

[198]

(Plaintiff Exhibit 68 was admitted into evidence. Defendants Exhibits 73, 74, 75, 80 through 91, 93, 95, 96 and 98 were admitted into evidence.)

THE COURT: Now we will take a recess until one-thirty.

(A recess was taken.)

AFTERNOON SESSION

[199]

MR. STOVER: Your Honor, if I may, I just wanted to advise the Court that defense counsel has graciously consented to excusing three of the facts witnesses who testified this morning. Mr. Pickett, Ms. Leopard and Ms. Douglass have been excused.

MS. BARTELS: That's correct.

MR. STOVER: We have allowed them to go back to West Virginia.

THE COURT: Fine.

MS. BARTELS: I have also had an opportunity to review Plaintiff Exhibit 68. I had initially had a reservation because I had not

[199 (cont'd)]

read it. It does represent only the interrogatory answers and attachments so the objection is stricken.

THE COURT: Thank you.

THOMAS MANAK resumes the stand.

DIRECT EXAMINATION (continued)

BY MS. KREBS:

Q Mr. Manak, just before we broke for lunch, I had given you a series of documents and asked you whether you had reviewed those in anticipation of your testimony here today, and also as part of the general work, you were asked to do for the hospital.

I would like to resume that line of questioning [200] and ask you to identify several more documents and ask whether you reviewed these documents in the course of --

THE COURT: I should have given you another ten minutes before we recessed.

MS. KREBS: With the Court's permission, I will approach the witness.

(Resume of Thomas Manak was introduced as Plaintiff Exhibit 59.)

BY MS. KREBS:

[200 (cont'd)]

Q I am handing you Plaintiff Exhibit 59. Would you identify that, please?

A This is my resume.

MS. KREBS: I would ask that the resume be admitted into evidence as the Plaintiff Exhibit 59.

MS. BARTELS: No objection.

THE COURT: It is admitted.

(Plaintiff Exhibit 59 was admitted into evidence.)

BY MS. KREBS:

Q Mr. Manak, I am also going to hand you a series of documents and ask you to identify these documents and whether you have reviewed them. These documents are again Defendants documents.

(Medicare cost report of WVUH for 1982-1983 was introduced as Defendants Exhibit 21.)

[201]

BY MS. KREBS:

Q I am handing you Defendants Exhibit 21. Would you identify that, sir?

[201 (cont'd)]

A This is a Medicare cost report for the fiscal year ending June 30, 1983.

Q For what institution?

A West Virginia University Hospital.

Q Did you review that for your work here?

A Yes, I did.

Q Is it the basis for any testimony you may give today?

A Yes, it is.

(Medicare cost report of WVUH for 1983-1984 was introduced as Defendants Exhibit 23.)

BY MS. KREBS:

Q Would you similarly identify please Defendants Exhibit 23?

A This is the West Virginia University Hospital Medicare cost report for fiscal year 1983 to 1984.

Q Did you review that, Mr. Manak, before your testimony here today and as part of the work you were to do for West Virginia University Hospital in this situation?

A Yes, I did.

[201 (cont'd)]

(Cost report of WVUH dated 12/31/84 was introduced as Defendants Exhibit 25.)

[202]

BY MS. KREBS:

Q I hand you what is marked Exhibit 25, Defendants Exhibit 25A. Please identify that?

A This is a Medicare cost report for West Virginia University Hospital for the short fiscal year, the six months ended December 31, 1984.

Q Did you review that cost report, Mr. Manak, for your work here?

A Yes, I did.

Q Is it a basis for any testimony you may offer later this afternoon?

A Yes, it is.

MS. BARTELS: Excuse me, Your Honor. To avoid any confusion, the two exhibits were renumbered, and I had given the tags to be put on those exhibits, and they obviously were not. 25A is actually 25, and 25B is 26. When I sent the tags over, I guess they didn't get put on the copies.

MS. KREBS: But the identity of the exhibit is the same. We would accept Defendants Exhibit 25.

[202 (cont'd)]

THE COURT: Wait a minute. Wait. Which one is that?

MS. KREBS: I had asked Mr. Manak to identify Defendants Exhibit 25A.

THE COURT: Which is now really 25.

MS. BARTELS: Yes.

[203]

THE COURT: We will put a new Defendants Exhibit label on that.

MS. BARTELS: All of the tags that we have on the copies they may use here have 25 on them. It is just that one copy.

THE COURT: Put 25 on. The next one would be 26 then I presume.

(WVUH Medicare cost report for fiscal year ended 12/31/84 as amended was introduced as Defendants Exhibit 26.)

BY MS. KREBS:

Q The next exhibit is Defendants Exhibit 26.

A This is the West Virginia University Hospital Medicare cost report for fiscal year ended December 31, 1984 as amended.

[203 (cont'd)]

Q Did you review that, Mr. Manak, for your assignment for West Virginia University Hospital?

A Yes, I did.

Q Is it a basis for any testimony you may give later today?

A Yes, it is.

(Medicare cost report of WVUH for 1985 was introduced as Defendants Exhibit 27.)

BY MS. KREBS:

Q Mr. Manak, this is Defendants Exhibit 27. Please identify it.

[204]

THE COURT: Mrs. Krebs, give her that so she can put the 26 on.

A This is the Medicare cost report for the hospital's fiscal year 1985 and ends December 31, 1985.

THE COURT: What is the number on that?

A 27.

THE COURT: Thank you.

BY MS. KREBS:

[204 (cont'd)]

Q Did you review that document for this assignment for West Virginia University Hospital?

A Yes.

Q Is it a basis for any information or testimony you may give today?

A Yes.

(Medicare cost report of WVUH for 1986 was introduced as Defendants Exhibit 29.)

BY MS. KREBS:

Q Mr. Manak, I hand you Defendants Exhibit 29. Please identify it.

A It is the West Virginia University Hospitals, Inc. Medicare cost report for fiscal year 1986.

Q Have you reviewed that document, sir?

A Yes, I have.

Q Is it a basis for any testimony you may give today?

A Yes, it is.

[205]

MS. KREBS: I would ask the Court to accept into evidence the Defendants Exhibits and make them part of the Court record in this case.

THE COURT: Any objection?

MS. BARTELS: No objection.

THE COURT: They are admitted.

(Defendants Exhibits 21, 23, 25, 26, 27 and 29 were admitted into evidence.)

(WVUH Medicaid cost reports for fiscal year 1983-1984 was introduced as Plaintiff Exhibit 49.)

BY MS. KREBS:

Q Mr. Manak, I also hand you Plaintiff Exhibit 49. Please identify this, sir.

A These are Pennsylvania -- these are West Virginia University Hospital, Inc. Pennsylvania Medicaid cost reports.

Q For which years?

A For the fiscal year ended June 30, 1983, the year ended June 30, 1984, the short fiscal year ended December 31, 1984, the year ended December 31, 1985, and the year ended December 31, 1986.

[205 (cont'd)]

Q Have you reviewed these documents, Mr. Manak?

A Yes.

Q Are they a basis for any testimony you may give today?

A Yes, it is.

THE COURT: Are they all one exhibit?

[206]

MS. KREBS: Yes, Your Honor, they are. And I would ask that they also be admitted into the Court's record as Plaintiff Exhibit 49.

MS. BARTELS: No objection.

THE COURT: They are admitted.

(Plaintiff Exhibit 49 was admitted into evidence.)

BY MS. KREBS:

Q Mr. Manak, in preparing your work for West Virginia University Hospital, did you have occasion to review any other materials, and if so could you tell us what they were?

A Yes, I did review other materials. I reviewed an analysis of the Pennsylvania Medicaid system provided by the Hospital Association of Pennsylvania. I reviewed an analysis that was done by Price

[206 (cont'd)]

Waterhouse of the payments to West Virginia University Hospital, Inc. I reviewed the rules and regulations related to the payment methodologies.

Q Which payment methodologies?

A Payment methodologies relating to payments to in-state hospitals by the State of Pennsylvania and to out-of-state hospitals.

Q For the Medicaid Program?

A For the Medicaid Program.

Q Did you review any other documents relating to the Commonwealth of Pennsylvania?

A Not anything right offhand. There was large volumes of [207] documents. I don't remember what else I reviewed.

Q Did you review any bulletins or anything of that nature?

A "Pennsylvania Bulletin" I reviewed as well as I looked at information that the Defendants supplied us in response to the interrogatories. I also reviewed some discovery tables and items identified during discovery.

Q Did you have any conversations with staff of the Pennsylvania Medicaid Agency?

A Yes, I did.

[207 (cont'd)]

Q Was the information you obtained from those conversations part of your general review?

A Yes, it was.

Q Did you have any conversations with staff of the Hospital Association of Pennsylvania with respect to your overall review of the Pennsylvania payment methodologies?

A Yes, I did.

Q Did you review the "Pennsylvania Bulletin" concerning changes in the Pennsylvania Medicaid payment system?

A Yes, I did.

Q Did you review the documents that were provided by Defendants in response to the hospital's request for production of documents?

A Yes, I did.

Q Have you reviewed, Mr. Manak, cost information from [208] West Virginia University Hospital itself?

A Yes, I did review cost information.

Q And do you recall specifically what cost information you reviewed?

[208 (cont'd)]

A In regards to looking at cost information, I was reviewing costs of their graduate medical education program. I reviewed costs related to their capital and operating expenses.

Q You reviewed their Medicare and Medicaid cost reports?

A Yes, I did.

Q Pennsylvania Medicaid cost reports?

A Yes.

Q Have you reviewed the hospitals financial statements?

A Yes, I have.

Q Have you reviewed any kind of feasibility study or other statistical data pertaining to the hospital?

A There was a feasibility study prepared by another consulting firm which I reviewed which was related to the bond issue for their replacement facility.

Q Have you reviewed any statistical data concerning the hospital's admissions?

A Yes, I did.

Q Have you reviewed any statistical data concerning the hospital's number of beds?

[208 (cont'd)]

A Yes.

[209]

Q Have you reviewed any statistical information concerning the interns and residents who may provide service at that hospital?

A Yes, I did.

Q Now, Mr. Manak, is the data and information that you reviewed that deals with the Pennsylvania system for reimbursing inpatient services to Medicaid patients, is that type of information the same kind of information you have reviewed with respect to payment systems in general in the course of your work?

A Yes, it is. In general, the types of financial information, the expense information, the utilization information and economic information related to payment methodologies is consistent among various different States and the Medicare Program.

Q But the information from Pennsylvania and the cost data that you received from the hospital is the kind of information and statistical data that you would normally review in the course of your professional activities?

A The data that I looked at is the type of data I review on a regular basis in my profession.

MS. KREBS: Your Honor, I would move to qualify Mr. Manak as an expert to testify as to the general application of the

[209 (cont'd)]

payment methodology in Pennsylvania for Medicaid patients to West Virginia University Hospital.

[210]

MS. BARTELS: Your Honor, we would reserve the right to cross-examine him on his qualifications at this time.

THE COURT: Do you wish to voir dire at this time? You may proceed.

CROSS EXAMINATION AS TO QUALIFICATIONS

BY MS. BARTELS:

Q Mr. Manak, in the course of your reviews or your review of all these materials that you have just described, did you have an occasion to review materials relating to any of the in-state hospitals specifically, cost reports and other information?

A The information I reviewed regarding in-state hospitals specific data was only the information provided in the various Defendants Exhibits.

Q You did not have the opportunity to review cost reports of in-state hospitals?

A I have reviewed the -- I did look at at least one cost report for a hospital in the State of Pennsylvania.

Q Do you recall which hospital that was?

[210 (cont'd)]

A No, I don't.

Q During the course of the review, did you review any cost reports prepared by any other out-of-state hospitals that participate in the Pennsylvania Medicaid Program?

A No, I did not.

[211]

Q Did you review any documents which would show the listing of claims that were paid to West Virginia or did you rely solely on the documents you already described?

THE COURT: I am sorry. May I have the question again?

BY MS. BARTELS:

Q Did you rely or review any documents which listed the claims actually paid by the Pennsylvania Medicaid Program?

A I relied on the information provided by the Defendants in their Defendant Exhibits.

Q If I were to show you an exhibit, would you be able to tell me whether or not you reviewed that in the course of your analysis?

A I think so.

MS. BARTELS: May I approach the witness, Your Honor.

[211 (cont'd)]

THE COURT: Yes.

BY MS. BARTELS:

Q Mr. Manak, I would like to show you what has been marked as Defendants Exhibit 71. Did you review that or any similar documents in your review?

A When I was reviewing the exhibits that were presented to us by the Defendants, this type of exhibit I did notice. My charge was to take a look at the overall payment methodology of the State. This is a document that shows [212] payments by patient. Which in looking at what I was charged to do in looking at the overall patient methodology and the amount that was paid, this would not have an impact on them.

Q Mr. Manak, did you also have the opportunity during your review to review any of the audits that were issued relating to the cost reports you have identified?

A Which cost reports?

Q The Medicare cost reports you have identified for 1982-1983 and '83-84 and I believe beyond.

A During discovery, I reviewed the Medicare audit adjustments for approximately three years of Medicare cost reports. I have not looked at Medicare audited cost reports.

MS. BARTELS: Your Honor, I believe we have no objection to his qualifications as an expert.

[212 (cont'd)]

THE COURT: He is so admitted.

* * *

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

TESTIMONY OF DR. GERARD ANDERSON
(May 4, 1988 Transcript)

[293] DIRECT EXAMINATION AS TO QUALIFICATIONS

BY MR. ADAMS:

Q Dr. Anderson, what is your position?

A I am an Associate Professor at Johns Hopkins University and Director for the Center for Hospital Financing Management at Johns Hopkins University.

Q Can you tell us briefly what the Johns Hopkins Center for Hospital Finance and Management?

A Johns Hopkins Center for Hospital Finance and Management is a group of academics from the Johns Hopkins University from the School of Public Health, from the Medical School and from the Hospital. And its about 50 individuals who are taking a look at the hospital and a variety of aspects related to hospital finance and hospital care.

Q Can you tell whether there are any other such centers in the United States?

A There are research centers, but I think we are the only [294] one devoted exclusively to looking at the hospital.

Q You enjoy the title of Doctor. Can you tell us what degree you have?

[294 (cont'd)]

A I have a PhD in public policy analysis from the University of Pennsylvania. It is basically a degree in economics and statistics.

Q How long have you been the Director of the Johns Hopkins Center for Hospital Finance and Management?

A A little over a year.

Q Prior to that, what position did you hold?

A I was the Associate Director of the Center.

Q How long did you hold that position?

A For four years.

Q Can you tell us a little bit more about what the Center does?

A It is primarily a research activity. So what we do is we take a look at issues that we think are of public policy interest and try to study those from a societal perspective. We will get grants either from the federal government or state governments. We will get grants from private foundations, or we would potentially get them from hospitals; although, we don't typically get them from those or private corporations. We will take a look at an issue generally from a societal perspective.

Q Are you familiar with the acronym HCFA?

[295]

A The Health Care Financing Administration.

Q Have you in your capacity or in your work with the Johns Hopkins Center performed any work for HCFA?

A We have a grant right now from the Health Care Financing Administration trying to design ways to pay health maintenance organizations, the HMO's, alternative methods for doing it other than the way the Health Care Financing Administration currently pays them.

Q Can you tell us what HCFA is in the sense of what does that agency do?

A It adm. ..sters the Medicare and Medicaid Programs for the federal government.

Q And would that agency then be the federal oversight agency for the Pennsylvania Medicaid Program?

A Yes, it would.

Q Are you familiar with the acronym ProPac?

A Yes.

Q Could you tell us what that is?

[295 (cont'd)]

A It is Prospective Payment Assessment Commission. It is an entity established by the United States Congress to take a look at the Medicare prospective payment system.

Q And do you have any involvement with that study?

A With that institution, I do. We have done a number of studies for them related to hospital capital financing.

Q This is for the United States Congress?

[296]

A Yes, it is.

Q In your work with the Johns Hopkins Center, did you ever have occasion to address problems that relate to academic medical centers?

A Yes. One of the grants that we have is a very large grant that we administer jointly with the Association of American Medical Colleges, the AAMC. And we are taking a look at issues related to the academic medical center, trying to help them develop a data base, trying to understand public policies that confront the academic medical center and try to develop policy initiatives for the academic medical center.

Q Now in your work with the Johns Hopkins Center, do you ever have occasion to review and analyze payment methodologies that may

[296 (cont'd)]

be proposed for the reimbursement of hospitals under either the Medicaid or Medicare Programs?

A Yes, I do.

Q Prior to your going to the Johns Hopkins Center for Hospital Finance and Management, what position did you hold?

A I was an economist statistician in the Office of the Secretary in the Department of Health and Human Services in Washington, D.C.

Q When you say in the Office of the Secretary, do you mean actually in his office or just simply a part of the United States Department of Health and Human Services?

A The Secretary has a number of offices within in his own [297] office, but it is basically in the building where he is. And I had an opportunity to work with him on prospective payment and a number of other issues on an ongoing business.

Q How long were you in that position?

A I was there for five years.

Q When did that work begin?

A I started in 1978 and ended in 1983.

[297 (cont'd)]

Q Are you familiar with the report that the Secretary of Health and Human Services transmitted to Congress concerning the prospective payment system for the Medicare Program?

A Yes, I am.

Q Did you have any involvement in that?

A I did.

Q Could you please tell the Court what your involvement was?

A I had an opportunity to work with the people writing the report. As I was reviewing the report -- and I had basic oversight with review within the Office of the Secretary -- I found that it was necessary to rewrite the executive summary of it which was really the part of the report that got distributed to Congress.

During the process of oversight and review of the Secretary's report, I had an opportunity to meet on a periodic basis with the Secretary to discuss the various aspects of the prospective payment system with him.

[298] I also had an opportunity to brief people in the White House with regard to the prospective payment system. So, for example, I would meet with the Chairman of the Council of Economic Advisors.

[298 (cont'd)]

Q When the Secretary of the Department of Health and Human Services required answers to whatever technical questions that he might have had about that prospective payment system, to whom would he turn?

A He could turn to a number of people. But one of the people that he would turn to was myself.

Q How frequently would you be consulting with the Secretary of the Department for Health and Human Services?

A During the period that we were developing the Medicare prospective payment system, it would generally be on a weekly or more often than that basis. And other times during my tenure there, it wouldn't have been as frequent.

Q Am I correct in assuming, Dr. Anderson, that at various points in time the Secretary would have to go to Congress to give testimony concerning the Medicare prospective payment system?

A Yes, he would.

Q Who would accompany him?

A There would generally be the Assistant Secretary for Legislation and myself and maybe one or two other people.

[298 (cont'd)]

Q Would you -- would there be a group of people from the [299] Secretary's office who would routinely be expected to brief the various members of Congress concerning the prospective payment system as it went through the Congressional process?

A More typically, we would brief the Congressional staffers as opposed to the individual members of Congress.

Yes, there was a team that was expected to do that.

Q Were you a member of that team?

A Yes, I was.

Q Did you at this point in time when this prospective payment system for the Medicare Program was being developed, did you have any occasion to work with the Council of Economic Advisors?

A Yes, I did.

Q What did you do with respect to that entity?

A I had an opportunity to brief the Chairman of the Council of Economic Advisors Mark Feldstein.

MS. BARTELS: Your honor, we would ask that there be an offer of proof as to anything further about the development of the Medicare system which is not in litigation here. We are willing to

[299 (cont'd)]

stipulate that Dr. Anderson is intimately familiar with the Medicare System.

MR. ADAMS: We are moving on from that point at this point. I will not be addressing that again. We were simply trying to establish the basis for Dr. Anderson's expertise.

BY MR. ADAMS:

[300]

Q Dr. Anderson, have you ever had an occasion to author any articles or books concerning reimbursement methodologies and just how you finance health care?

A Yes, I have.

Q Can you tell me -- can you identify the names of any recent books that you have authored?

A Two books are forthcoming from the Johns Hopkins University Press this year. One is entitled in "No Free Lunch," and it talks about the academic medical center and the services being provided by th academic medical center. The second one is entitled "Health Care Payment Reform." What it is looking at is the history both from the Medicare and the Medicaid and the private sector side of payment reform in the United States really from 1965 through 1988.

[300 (cont'd)]

Q Now in the context of articles, how many articles generally have you published so far?

A I have about forty to forty-five articles in peer review journals.

Q What do you mean by peer review journals?

A That is to differentiate from a journal like "Hospitals" or another journal which is not peer review, is not looked at by your other academics or other experts in the field.

[301]

Q So basically the articles you have just testified about are basically articles of an academic nature?

A Yes, they are.

Q And by contrast, other articles and other types of magazines would be basically what I call the throw away magazines?

A That is your term.

Q You know what I mean by that term?

A Yes, I do.

Q Dr. Anderson, in the course of your career, have you had an occasion yourself to testify in the United States Congress concerning reimbursement of hospitals and payment methodologies for hospitals?

A Yes, I have.

[301 (cont'd)]

Q Can you briefly tell the Court the numbers of occasions and the types of occasions where you have given such testimony?

A I have testified in the Senate Finance Committee, the House Ways and Means Committee, the Energy and Commerce Committee on a variety of issues related to hospital capital finance, clinical education, hospital performance under prospective payment systems. Most recently, I testified on the first of April of this year to the Ways and Means Committee on hospital performance under prospective payment systems.

[302]

Q In giving such testimony, were you invited by the committees of the Congress to give such testimony?

A Yes, I was.

MR. ADAMS: I would like to approach the witness, Your Honor.

THE COURT: Yes.

(Copy of Dr. Gerard Anderson's resume was introduced as Plaintiff Exhibit 57.)

BY MR. ADAMS:

[302 (cont'd)]

Q Dr. Anderson, I am going to be handing you what we have marked as Plaintiff Exhibit 57.

Do you recognize that document, Dr. Anderson?

A Yes, I do.

Q What is it?

A It is a copy of my resume.

Q I want to direct your attention to the second page -- excuse me -- yes, the second page of that document. I see listed about on the bottom third of that page a section entitled articles?

A Yes.

Q Is that correct?

A Yes.

Q Am I to assume that that page and the ones that follow it list the various articles that you have written thus far?

A Those are the ones which would be in peer review [303] journals.

Q I draw your attention to the sixth page of your resume. I see you have a section there entitled grants, principal investigator post 1983. Can you tell us what the significance of the items are that are listed there?

[303 (cont'd)]

A Generally to get grants, one has to go through a competitive process to obtain these grants. Again, there is peer review kinds of activities, or they are from private foundations who have decided that the quality of work that you do is worthy and that they want to give you those types of grants.

MR. ADAMS: Your Honor, we would proffer Dr. Anderson as an expert on the topics of health care finance, specifically hospital finance, specifically hospital methodologies for reimbursement and in particular reimbursement under both the Medicare and Medicaid Programs.

THE COURT: Do you wish to voir dire?

MS. BARTELS: I would ask whether that is referring specifically to the Pennsylvania Medicare Program or the nationwide Medicaid Program?

MR. ADAMS: There is only a national Medicare Program, but Medicaid he is, we believe, fully competent to comment on the Pennsylvania Medicaid Program.

MS. BARTELS: I would like to ask a few questions.

BY MS. BARTELS:

[304]

Q Dr. Anderson, are you familiar with the Pennsylvania Medicaid Program?

A I know that it exists. I have had an opportunity to review a number of documents regarding the Pennsylvania Medicaid Program.

Q Do you recall what types of documents you reviewed?

A A whole variety of documents, particularly the history of the development of the Pennsylvania Medicaid Program.

Q Have you ever read the regulations which set forth the payment methodology?

A I have reviewed them, yes.

Q Have you had an opportunity to analyze any hospital payments for specific hospitals under the Pennsylvania Medicaid Program?

A Other than looking at the general methodology, no, I have not looked at any individual hospitals.

Q Have you looked at any other statistics that would represent data concerning the Pennsylvania or out-of-state hospitals in the Pennsylvania Medicaid Program?

A For example, I had an opportunity to look at the exhibits that Mr. Manak introduced in his testimony yesterday. I had an opportunity to

[304 (cont'd)]

look at the methodologies which is included in the history of the development of the [305] Pennsylvania prospective payment system. And that includes a great deal of numbers in terms of what hospitals get paid, etcetera.

Q Did you do any analyses based on those numbers or form any opinions about that program based on those numbers?

A Yes, I did.

MS. BARTELS: We have no objection.

THE COURT: He is so admitted.

MR. ADAMS: We would also move the admission of Plaintiff Exhibit 57, Dr. Anderson's resume.

MS. BARTELS: No objection.

THE COURT: It is admitted.

(Plaintiff Exhibit 57 was admitted into evidence.)

DIRECT EXAMINATION

BY MR. ADAMS:

Q Dr. Anderson, I take it from your responses to Mrs. Bartels that you have done some preparation for your testimony today with specific respect to this litigation; is that correct?

A Yes, it is.

[305 (cont'd)]

Q Have you reviewed any of the pleadings in this case?

A Yes, I have.

Q Can you tell me what pleadings you have reviewed?

A I have reviewed the pleadings that the State -- that the hospital provided and then the State's response, [306] etcetera.

Q Have you reviewed the hospital's complaint?

A Yes, I have.

Q Have you reviewed the defendants' answer?

A Yes, I have.

Q Have you reviewed the Defendants' answers to the hospital's interrogatories?

A Yes, I have.

Q Have you reviewed any of the documents that were produced by the Defendants in the document production?

A Yes, I have.

Q Have you reviewed any of the depositions in this case

A Yes, I have.

Q Have you reviewed Dr. Vertrees' deposition?

A Yes, I have.

[306 (cont'd)]

Q Did you review Mr. Feinberg's deposition?

A Yes, I did.

Q Did you review Mr. Nyce's deposition?

A Yes, I did.

Q Did you review Mr. Radke's deposition?

A Yes, I did.

Q I believe you have already said you have reviewed the State regulations concerning the Pennsylvania prospective payment system?

A Yes, I have.

[307]

Q Have you reviewed the State Plan?

A Yes, I have.

Q Have you reviewed the Pennsylvania findings and assurances concerning the Pennsylvania Medicaid Program?

A Yes, I have.

Q Have you reviewed the various stipulated facts in this case?

A Yes, I have.

Q Have you reviewed any of the exhibits that have been prepared for this presentation in this litigation?

A Yes, I have.

[307 (cont'd)]

Q Would I be correct, Dr. Anderson, in believing or assuming that your review of these documents form a basis for whatever opinions you may have reached concerning the Pennsylvania Medicaid reimbursement methodology?

A Yes.

* * *

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

TESTIMONY OF DR. PAUL GRIMALDI
(May 4, 1988 Transcript)

[427] DIRECT EXAMINATION AS TO QUALIFICATIONS

BY MR. ADAMS:

Q Dr. Grimaldi, what is your current position?

A I am the Director of Health Economics Reimbursement Policy at Coopers and Lybrand based on the Washington, D.C. office.

Q Could you tell us what Coopers and Lybrand is, please?

A Coopers and Lybrand is a major accounting firm which has as one of its components a management consulting services [428] division of which I am employed by.

Q In what area do you enjoy your doctorate degree?

A My doctorate is in economics.

Q How long have you been with Coopers and Lybrand?

A I have been with Coopers and Lybrand approximately five years.

Q In your work with Coopers and Lybrand, what exactly do you do?

A In the present position because I have held two? In the present position, I serve as a national resources for our offices around the country primarily as either a technical advisor or as a person who will conduct or undertake parts of various studies that we will be doing.

Q What would those studies relate to?

[428 (cont'd)]

A The studies could relate to situations facing a particular State Medicaid Agency. It could relate to a study relating to a particular issue facing a hospital, or it could relate to an issue relating to a particular insurer, HMO, etcetera.

Q Would any of these issues deal with reimbursement issues or reimbursement methodology issues?

A Yes, they do.

Q Prior to coming to Coopers and Lybrand, what was your position?

A Prior to coming with Coopers and Lybrand, I was the [429] Director of Health Economics and Research for the New Jersey Hospital Association.

Q What did you do in that position?

A My primary responsibility was (a) starting in a consulting capacity to the one hundred plus hospitals in New Jersey, and (b) to serve as a hospital representative relative to the State's efforts to implement the DRG program for New Jersey.

Q Dr. Grimaldi, does New Jersey enjoy any special relationship in the history of the development of the DRG system?

[429 (cont'd)]

A Yes, it does. New Jersey is generally regarded as I guess to use the phrase "the Father of DRG's." It was the first major implementation of DRG's. And a part of what the federal government ultimately developed is very similar to what exists in New Jersey.

Q Have you had an occasion to author any books concerning developments of a DRG system?

A I have co-authored one book that relates to DRG's as it evolved in New Jersey. That was entitled "DRG's, The Practitioner's Guide." I also co-authored I think it was two books relating to Medicare's implementation of the DRG Program.

[430]

Q Are those books referred to by practitioners around the country as source authorities?

A I would like to think so. I know the first one certainly has been. I have seen the other one quoted in various places so I would say yes.

Q How long were you with the New Jersey Hospital Association?

A Approximately four and a half years.

Q Did you have any role to play -- did you ever have any position with the New- Jersey Medicaid Program?

A Yes, I did.

[430 (cont'd)]

Q What was that position?

A I was the Chief of the Bureau of Health Statistics and Economics during the early 1970's.

Q What did you do in that position?

A I was directly responsible for the operation of the unit which contained at its high point I think eleven people. We were responsible for Medicaid -- preparing a Medicaid budget as it relates to service delivery, analyzing federal and State legislation as it related to the Program and conducting special studies at the direction of the people I reported to.

Q Did you ever enjoy any position with Seton Hall University?

A Yes. Over a span of approximately twelve years, I was on the faculty -- sometimes part-time, sometimes fulltime, depending on the circumstances.

[431]

Q During that tenure with the University, did you ever have an occasion to provide health consulting and health financing consulting services to clients?

A Yes, I did. I provided services to county governments, private industry, etcetera.

[431 (cont'd)]

Q Can you give us an approximation of the number of books and articles that you have written on the topics of health care finance?

A I would say six books --- well, five books if you say health care. Five books and approximately three dozen articles.

(Resume of Paul Grimaldi was introduced as Plaintiff Exhibit 58.)

BY MR. ADAMS:

Q I am going to show you now what we have marked as Plaintiff Exhibit 58.

MS. BARTELS: We are willing to stipulate that is his resume and that he wrote those articles if that will help things.

MR. ADAMS: Your Honor, if that is the case, we would offer Dr. Grimaldi as an expert in health care finance and health care reimbursement particularly as it relates to hospitals.

MS. BARTELS: The problem we have, Your Honor, is most of those articles relate to nursing homes.

[432]

A That is not correct. A portion of them do. Most of them do not.

THE COURT: In spite of that, he has made a proffer. Will you stipulate?

[432 (cont'd)]

MS. BARTELS: I will stipulate as far as health and hospital finance in general as long as he is not testifying specifically for Pennsylvania at this point.

MR. ADAMS: He most certainly will, Your Honor. Your Honor, I notice we have a number of people in the courtroom.

THE COURT: If there are any fact witnesses in the courtroom, please remain out in the hallway -- by either side.

MR. ADAMS: I can take him through an examination.

THE COURT: She is apparently not going to stipulate so let's go.

BY MR. ADAMS:

Q Dr. Grimaldi, have you had an occasion to review the Plaintiff's complaint in this case?

A Yes, I have

Q Have you had an occasion to review the Defendants' answer in this case?

A Yes, I have.

THE COURT: Are you getting into the substance of his testimony?

[433]

MR. ADAMS: I was trying to establish what he has reviewed, and I am going to take him back through the exhibits that I took Dr. Anderson through. And I think if I do that, I can then proffer him.

THE COURT: All right.

BY MR. ADAMS:

Q Have you had an occasion to review the Defendants' answers to the hospital's interrogatories in this case?

A Yes, I have both sets.

Q Have you had an occasion to review the various documents that were produced by the Defendants during the document production?

A Yes, I have.

Q Have you had an occasion to review the depositions of Dr. James Vertrees?

A Yes.

Q Have you had an opportunity to review the 30(b)(6) deposition of Mr. Feinberg?

A I have reviewed the deposition. I don't know if it is a 30(b)(6).

Q I will assure you it was a 30(b)(6) deposition. Have you had an occasion to review the deposition of Mr. Lloyd Nyce?

A Yes, I have.

[433 (cont'd)]

Q Have you had an opportunity to review the deposition of [434] Mr. Gerald Radke?

A Yes, I have.

Q Have you had an opportunity to review the deposition of Mr. Redmond from the Hospital Association of Pennsylvania?

A Yes, I have.

Q Have you had an opportunity to review the deposition of Mr. Ackroyd from the Hospital Association?

A Yes, I have.

Q Have you had an opportunity to review the depositions of Ms. Sheron Sturm?

A Yes.

Q And have you had an opportunity to review the deposition of Mrs. Schoen?

A Yes.

Q Have you had an opportunity to review the Pennsylvania regulations concerning the Pennsylvania Medicaid prospective payment system?

A I reviewed the proposed and final set for 1984 and what I believe are the final capital regulations published in November of '86.

[434 (cont'd)]

Q Have you had an occasion to review the findings and assurances that were submitted by Pennsylvania?

[435]

A Yes, I have.

Q Have you had an opportunity to review the stipulated facts in this case?

A Yes, I have.

Q Have you had an opportunity to review the State Plan that Pennsylvania has submitted?

A Yes, I have.

Q Have you had an opportunity -- and perhaps you want to look through the pile of exhibits on the table there -- have you had an opportunity to examine Plaintiff Exhibit 5? And please look for it; I want to make sure.

A I am sure I have.

Q Why don't we do it this way, Dr. Grimaldi, why don't you go through that stack and tell us which of the exhibits that are stacked there that you have reviewed in preparation for today?

A Do you want me to call them off as I look through them?

Q Please.

[435 (cont'd)]

A Exhibit 8, 11.

Q Could you say Plaintiff Exhibit 8?

A Plaintiff Exhibit 8, 11.

Q Plaintiff Exhibit again?

A Yes. All these will be Plaintiff Exhibits unless I say otherwise. Plaintiff Exhibits 9, 6, 13, 63, 55A, 51A, 66, 4, 5, 15, 84, 80. I am sorry; I am in trouble. Those were -- 80 and 84 are labeled Defendants Exhibits. So is 15. 81 is a Defendant. 82 is a Defendant. 84, 85, those are Defendants. 30 is Plaintiff. Of the ones I have here, that is it.

[436]

Q Do you have up there anywhere Plaintiff Exhibit 26?

A I don't see it here, no.

Q Dr. Grimaldi, we believe you may have placed it on the floor. It is a very large exhibit.

A I am sorry. Yes, I do have it.

Q Have you reviewed Plaintiff Exhibit 26?

A This is the history file?

Q Yes.

A Yes, I have.

TESTIMONY OF DR. PAUL GRIMALDI

((May 4, 1988 Transcript)

[436 (cont'd)]

MS. BARTELS: At this time, we are satisfied that he has indeed reviewed Pennsylvania materials, and so we will stipulate to his qualifications.

THE COURT: So admitted.

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UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

TESTIMONY OF DR. MICHAEL MAHER
(May 4, 1988 Transcript)

[632]

DIRECT EXAMINATION AS TO QUALIFICATIONS

BY MR. ADAMS:

Q Mr. Maher, can you tell us what position you currently hold?

[633]

A I am a partner with the firm of Coopers and Lybrand in their Philadelphia office.

Q What do you do with that office of Coopers and Lybrand?

A I run the Health Care Services Department which is a regulatory reimbursement consulting organization.

Q Prior to your coming to Coopers and Lybrand, what did you do?

A I was employed with the United States Health Care Financing Administration.

Q Is that not the agency that deals with Medicaid and Medicare Programs?

A Yes, that is the agency that has overall federal responsibility for both the Medicare and Medicaid Programs.

Q How long were you with the Health Care Financing Administration?

[633 (cont'd)]

A I was with it since its inception in 1979, and prior to that with the preceding organization since 1973.

Q Could you tell us what your duties and responsibilities were when you were with the Health Care Financing Administration?

A Yes. My responsibilities were to develop the regulations, manuals, cost reports or other issuances that governed reimbursement issues dealing with the Medicare Program as well as reviewing State Plans for approval for their Medicaid Programs.

[634]

Q Did you have any role in the designing of any of the cost reports that were used by the Medicare Program?

A Yes. The cost report was also a responsibility of the office that I headed up.

Q Did you have any involvement with the development of any of the reimbursement regulations for either the Medicare or the Medicaid Programs?

A Yes. All of the reimbursement regulations were my responsibility for revisions, development.

[634 (cont'd)]

Q While you were with the federal government, Mr. Maher, did you have an occasion ever to brief the Secretary to the United State Department of Health and Human Services?

A Yes.

Q What would you brief him about generally speaking?

A If there were controversial matters that required his attention, I would be involved sometimes by myself and sometimes with others in articulating and briefing him on those subjects.

Q Did you ever have an occasion to work with the Congress?

A Yes.

Q What would that work involve?

A That ranged from testimony before hearings of the Congress or working on a technical -- in a technical capacity with the professional staff members of the Congress or [635] Congressional committees.

Q Would that involve the matters concerning the area of hospital reimbursement?

A Yes.

Q You stated I believe earlier that you had some responsibility for the review of State Plans in the Medicaid Program; is that correct?

A That's correct.

[635 (cont'd)]

Q What exactly would you do in that process when you reviewed a State Plan?

A Prior to the prospective payment legislation which was passed in 1983, that required an in-depth review of various amendments to State Plans so that the State could ensure that the federal government would pay its share of the Medicaid Program expenditures in the State. After the 1983 legislation, that was changed so that the federal government simply had to review the assurances of the State governments that it met certain requirements of the law.

Q And in the review of those plans and those assurances after 1983, did the federal government go behind those assurances to separately evaluate the findings and the basis for those findings?

A No. After 1983, basically the review was that the State assurances were acceptable.

[636]

Q You testified that you went to Coopers and Lybrand in approximately 1984; is that correct?

A Yes.

Q Do you know what signature authority means, Mr. Maher? Is that a term you are familiar with?

[636 (cont'd)]

A Yes.

Q Can you tell us what that term means to your understanding?

A That means that I can sign the name Coopers and Lybrand on a document or on a letter, and I commit the firm of Coopers and Lybrand.

Q Do you have signature authority at Coopers and Lybrand?

A Yes, I do.

Q Is that signature authority in particular related to Medicaid and Medicare reimbursement issues?

A No. It is general signature authority, but that is the most common use that I have is for Medicare and Medicaid matters.

Q Mr. Maher, does your office -- I assume you supervise people; is that correct?

A Yes, I do.

Q Do you and the people you supervise have an occasion to advise Pennsylvania hospitals concerning Pennsylvania Medicaid reimbursement?

A Yes, we do.

[637]

Q Do you know how many hospitals that your office normally advises on those matters?

A It varies by year. Coopers and Lybrand has about 80 to 100 hospital clients in Pennsylvania.

Q What role do you play personally with respect to those 80 to 100 hospitals?

A Sometimes, I am involved in direct consulting for those hospitals. Probably up to forty of those I have been involved in personally. And other times, it is reviewing work that has been done by people who report to me.

Q Have you had an occasion in your work with Coopers to review the Pennsylvania Medicaid regulations governing the reimbursement of hospitals?

A Yes.

Q Have you had an occasion to either review or help to prepare Pennsylvania Medicaid cost reports?

A Yes.

Q Have you had an occasion to review specifically the Pennsylvania Medicaid regulation concerning the reimbursement or direct medical cost?

[637 (cont'd)]

A Yes.

Q Have you also had an occasion to review the federal Medicare regulations that concern the reimbursement of direct medical education costs?

A Yes, I have.

[638]

Q Do you and your staff become involved in audits of Pennsylvania Medicaid cost reports?

A Yes. As part of the audit, some of our hospitals we would either review or help the hospital prepare the Medicaid cost report.

Q Could you just briefly tell us what a cost report is?

A Yes. A cost report is a form designed by various payers, in this case Medicaid, to determine according to certain definitions how that hospital's costs will be reported in total and then what share that cost would be attributable to a particular payer. It basically sets out to the hospital you determine your costs using the following definitions, and then you break that down by payer, for example Medicaid, using certain formulas. Basically it is the document upon which most federal and state reimbursement flows.

[638 (cont'd)]

Q Would you have an occasion to give a hospital advice as to how to break that cost data down so it can be put on to the cost report?

A Yes.

MR. ADAMS: Your Honor, we would offer Mr. Maher as an expert not only in Medicare reimbursement, but also in Medicaid reimbursement, particularly Pennsylvania Medicaid reimbursement and also in the proper preparation of Pennsylvania Medicaid cost reports.

[639]

THE COURT: Do you wish to voir dire?

MS. BARTELS: Your Honor, I would like to. I am not sure exactly what relevance Medicare has in rebuttal of Mr. Feinberg's testimony.

MR. ADAMS: The only reason we bring up Medicare, Your Honor, is if you will recall Mr. Feinberg admitted that the State regulations on reimbursement of direct medical education costs incorporates the federal Medicare principles of direct medical education reimbursement.

MS. BARTELS: Your Honor, I believe there is a difference between Medicare principles and the payment under Medicare part B

[639 (cont'd)]

for physicians. I am not sure exactly what he is being proffered for. Before I respond, I want to know is he going to testify about both of those subject areas?

MR. ADAMS: He is going to testify that Mr. Feinberg is wrong.

THE COURT: With regard to?

MR. ADAMS: With regard to the fact that residents from approved training programs are not given separate provider contracts and do not bill for the services that they actually render to patients within a university hospital as separate providers; that instead, those costs of care are hospital costs, not physician's services costs; and that [640] under both the principles of the Medicare Program and the Pennsylvania Medicaid Program, they are reimbursed through the hospital.

MS BARTELS: Your Honor, I believe that Mr. Feinberg testified that either the resident or the attending physician was paid a payment. If they are going to proffer Mr. Maher to testify that the attending physicians have not billed, I don't know that that has been established.

THE COURT: Do you wish to voir dire on his qualifications?

[640 (cont'd)]

MR. BARTELS: Yes.

CROSS EXAMINATION AS TO QUALIFICATIONS

BY MS. BARTELS:

Q Mr. Maher, you indicated that you left HCFA in approximately 1984?

A Yes.

Q Do you recall when that was?

A March 1st, 1984.

Q During your time at HCFA, did you have the occasion to review the State Plan Amendment for the Pennsylvania prospective payment system?

A No.

Q You indicated that you review audits with your clients. Have you had occasion to review any audits of direct medical education since the prospective payment system in [641] Pennsylvania?

A I have had occasion to review audits of cost reports since that time, and those include direct medical education, yes.

Q Have you had an occasion to review any cost reports for periods beginning on July 1st of 1984 or later?

[641 (cont'd)]

A Yes.

Q Which periods would that be for?

A We reviewed through the year ending June 30th, 1987.

Q That is an audit report issued by the Department of the Auditor General, or is that a cost report?

A Our involvement is when the hospital has its financial audit done, part of that financial audit is to review the cost report because that is a very significant share of revenues for the hospital.

Q Have you had the opportunity to review any audit reports issued by the Department of the Auditor General for Medicaid in Pennsylvania for periods beginning on or after July 1st of 1984?

A No.

Q Are you aware then of --

A I am sorry. Audit reports meaning?

Q Actual certified costs and audit reports.

A Are you saying cost reports?

Q No, audit reports.

[642]

A No, I have not.

[642 (cont'd)]

Q Are you aware of any policy statements issued by the Department of the Auditor General or the Department of Public Welfare concerning the method for reimbursing direct medical education since the implementation of the prospective payment system?

A Yes.

Q What is your understanding of those policy statements?

A As was stated earlier, the policy is basically a pass-through separate payment from the prospective payment of the DRG rate. And since 1986 I believe, there has been a cap on how much could be passed through worked according to a formula.

Q What cost do you determine when you say direct medical education expenses?

A Direct medical education expenses involve the expenses of running an approved education program at the hospital and those cases involving graduate medical education for physicians. That would principally be the salaries of the interns and residents. There might be some training incidentals, but basically the bulk of that is the cost of the salary paid to an intern and resident.

[642 (cont'd)]

Q Have you had occasion to review provider agreements for physicians that work with the hospital clients you have?

[643]

A Yes.

Q Do you have any physician clients as well?

A We have physician clients, yes.

Q Do you know if any of them are teaching physicians, they teach resident in approved programs?

A Yes.

Q Do you have any knowledge as to how they bill for services or whether they bill for services provided during training sessions?

A Yes.

Q Do they bill for those services?

A Teaching physicians?

Q Yes.

A A physician generally will bill -- a teaching physician or an attending physician will bill for the services that he or she renders.

MS. BARTELS: We are satisfied that he has a background in the Pennsylvania system, Your Honor.

THE COURT: He is so admitted.

[643 (cont'd)]

MR. ADAMS: Thank you, Your Honor.

* * *

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

PLAINTIFF'S EXHIBIT 57

GERARD F. ANDERSON

Office Address

Center for Hospital Finance
and Management
The Johns Hopkins Medical
Institutions
624 N. Broadway, Hampton
House Rm. 300
Baltimore, Maryland 21205
(301) 955-3241

Home Address

11113 Waycroft Way
Rockville, Maryland 20852
(301) 231-9229

EDUCATION

University of Pennsylvania

Ph.D. in Public Policy Analysis, May 1978.
Dissertation: "A Longitudinal Investigation of Health"

Honors: University Fellow
Fellow of the Fels Center of Government
National Health Care Management Fellow

Haverford College

B.A. in Economics, May 1973.

Honors: Magna Cum Laude
High Honors in Economics
Phi Beta Kappa

ACADEMIC APPOINTMENTS

Director
The Center for Hospital Finance1987 - Present
and Management
Johns Hopkins University

Associate Director
The Center for Hospital Finance1983 - 1987
and Management
Johns Hopkins University

Associate Professor
Department of Health Policy1983 - Present
and Management
Johns Hopkins University

Co-Director
The Program for Medical1986-Present
Technology
and Practice Assessment
Johns Hopkins Medical Institutions

Adjunct Professor
Graduate School of Public1986 - Present
Administration
American University

PROFESSIONAL APPOINTMENTS

Economist
Office of Secretary1978 - 1983
U.S. Department of Health
and Human Services

Consultant1978
Blue Cross of Greater Philadelphia

Principal Investigator1974 - 1978
Philadelphia Health Management
Corporation

Research Analyst1973 - 1974
Federal Reserve Bank

Special Assistant
Cost of Living Council1972
Executive Office of the President

BOOKS

Davis K, Anderson GF, Rowland D, and Steinberg EP: Health Care Cost Containment: Lessons from the Past and a Policy Proposal for the Future, Johns Hopkins University Press, forthcoming.

Anderson GF, Lave, JR, Russe CM, Neuman P: No Free Lunch: Analyzing the Effect of Payment Reform on Hospital Services, John Hopkins University Press, forthcoming.

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CONGRESSIONAL

1983	House Aging Committee - Prospective Payment System
1984	Senate Committee on Finance - Graduate Medical Education
1985	House Energy and Commerce Committee - Merging Manpower Planning and Hospital Financing
1986	Senate Committee on Finance - Quality of Care
1987	House Energy and Commerce Committee - Technology Assessment
1988	Ways and Means Committee - Hospital Performance

JOURNAL ACTIVITIES

American Journal of Public Health

Health Affairs

Health Care Financing Review

Inquiry (Editorial Board)

Journal of the American Medical Association

Journal of Health Economics

Journal of Medical Education

Medical Care

Milbank Memorial Quarterly

New England Journal of Medicine

Review of Economics and Statistics

Southern Economic Review

GRANTS - PRINCIPAL INVESTIGATOR, POST 1983

Commonwealth Fund - Future Financing of Teaching Hospitals: A Framework for Public Policy

Department of Health and mental Hygiene, State of Maryland, - A Small Area Variations in Health Care Costs and Utilization

Bureau of Health Professions, DHHS - Health Professions Education

Department of Health and Human Services/Project HOPE - Implications of Physician Surplus

American Society for Parenteral and Enteral Nutrition - Implications of Prospective Payment

Department of Defense/ICF - Evaluation of the Military Health Services System

Prospective Payment Assessment Commission - Capital Payments

Commonwealth Fund - Academic Medical Centers

Bureau of Health Professions, DHHS - Education and Investor-Owned Hospitals

Bureau of Health Profession, DHHS - Health Professions Education

Prospective Payment Assessment Commission - Lagged Structures in Hospital Financing

Commonwealth Fund/Lewin and Associates - Policy Analysis for Academic Health Centers

Commonwealth Fund - Hospital Services

Commonwealth Fund/Association for American Medical Colleges - Typology of Teaching Hospitals

Retirement Research Foundation - Post Discharge Outcomes

Prospective Payment Assessment Commission/Lewin Associates - Quality of Care under PPS

Hartford Foundation - Cost Containment

American Association of Retired Persons - Policy Analysis in Long Term Care Issues

Health Care financing Administration - Adjusted Payment Rates Under Capitated Systems

April 1988

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

PLAINTIFF'S EXHIBIT 58

PAUL L. GRIMALDI, Ph.D.

COOPERS & LYBRAND
1800 M Street, N.W., Suite 400
Washington, D.C. 20036

EXPERIENCE

Director, Health Reimbursement Policy, Coopers & Lybrand, Washington, D.C. 1985 - Present. Responsible for directing economic and reimbursement studies for the Washington, D.C. health care practice and serves as a national resource for other Firm offices. Specific engagements include:

- Analysis (in-progress) of Michigan Medicaid's DRG program.
- Evaluation of the DRG program of Blue Cross and Blue Shield of Kansas City.
- Design and analysis of certain components of West Virginia's all payer hospital payment system.
- Evaluation of cost containment programs administered by Blue Cross and Blue Shield of Michigan.
- Analysis of key policy issues and structural features of Connecticut's all-payer prospective payment system.
- Development of alternative prospective payment systems for rehabilitation hospitals.
- Examination of a multi-health organization's feasibility study for SNF care and congregate care.

- Evaluation of a voluntary hospital's preliminary analysis of the feasibility of a lifecare community.
- Development of procedures for a SNF to comply with Medicare and Medicaid's new long term care survey (Part B or PaCS).
- Analysis (in progress) of Ohio Medicaid payment rates for HMO enrollees.
- Analysis (in-progress) of Oregon Medicaid payment rates for HMO enrollees.
- Examination of a reasonable cost vs. at-risk contract for HMO Medicare enrollees.

Director, National Health Care Practice, Coopers & Lybrand, New York, NY 1983-1985. Helped hospitals develop strategies for the billing/finance, data processing, utilization review, and other department to function effectively under Medicare's prospective payment system. Conducted numerous seminars nationally addressing DRGs, case-mix reimbursement, and evolving hospital marketplaces. Prepared marketing literature for the Firm's acute care and long term care services.

Director, Health Economics Research Services, New Jersey Hospital Association, Princeton, NJ, 1978-1983. Analyzed and monitored the NJ Health Department's construction of a DRG prospective payment system for inpatient hospital care. Assisted in the design of the NJ hospital market basket and a hospital case-mix information system. Provided technical assistance to hospitals in reimbursement matters.

Health Consultant, Department of Health and Social Services, Hudson County, NJ, 1976-1978. Examined the cost and utilization of various

health services and welfare programs. Engaged in planning activities for two long term care facilities. Prepared cost reports and certificates of need.

Health Economist, Hudson County Meadowview Hospital, Secaucus, NJ, 1975-1976. Identified and implemented changes leading to Medicare and Medicaid certification of distinct parts of a 724-bed long term care facility. Prepared policy and procedure manuals. Coordinated budgeting activities.

Chief, Bureau of Health Statistics and Economics, New Jersey Division of Medical Assistance and Health Services, Trenton, NJ, 1972-1974. Supervised 11 persons. Analyzed legislative changes affecting Medicaid. Helped develop an information system that monitored Medicaid payments, utilization, and provider participation. Prepared Form 2082 and sections of a $400 million Medicaid budget.

Professor of Economics, Seton Hall University, South Orange, NJ, 1971-1983. Taught (full-time or part-time) health economics, microtheory, econometrics, and other courses.

Adjunct Instructor, Fordham University, Bronx, NY, 1968-1971. Taught statistics and microtheory.

EDUCATION

PhD, Economics, Fordham University, 1974.
MA, Economics, Fordham University, 1967.
BBA, Accounting, Manhattan College, 1965.

PLAINTIFF'S EXHIBIT 58
(Cont'd)

AREAS OF SPECIALIZATION

Health Economics
Regulatory Economics
Mircoecomonics
Econometrics

SELECTED PUBLICATIONS

Case-mix Payment Systems for Nursing Home Care, Pluribus Press, 1987, 180 pp. (Coauthor).

Prospective Payment: The Definitive Guide to Reimbursement, Pluribus Press, 1985, 375 pp. (Coauthor).

Medicare's Prospective Payment Plan, Pluribus Press, 1984, 85 pp. (Coauthor).

DRGs: A Practitioner's Guide, Pluribus Press, 1983, 310 pp. (Coauthor).

Medicaid Reimbursement of Nursing Home Care, American Enterprise Institute, 1982, 194 pp.

Broadening Federal Coverage of Noninstitutional Long Term Care, American Health Care Association, 1981, 46 pp. (Coauthor).

The Supplemental Security Income Program: The New Federal Program for the Aged, Blind and Disabled, American Enterprise Institute, 1980, 120 pp.

"The Changing World of Long Term Care," in Long Term Care: Challenges and Opportunities, forthcoming March 1988.

"New SNF/ICF Conditions Proposed," Contemporary Long Term Care, vol. 10 (December 1987), pp. 17-20 (Coauthor).

"Long Term Care Policies: Defusing a Financial Time Bomb," Health Progress, vol. 68 (November 1987), pp. 33-40.

"Fair Rental systems: Paying Nursing Homes for Capital Costs," Healthcare Financial Management, vol. 41 (October 1987), pp. 40-52 (Coauthor).

"Quality Assurance in a PaCS and Case-Mix Environment," Quality Review Bulletin, vol. 10 (May 1987), pp. 170-174 (Coauthor).

"Misconceptions About Case-Mix Payments of Nursing Homes," Health Progress, vol. 68 (April 1987), pp. 30-36.

"Establishing Fees for Continuing Care Retirement Community Services," Healthcare Financial Management. vol. 41 (February 1987), pp. 36-44.

"The Growing Need for Risk Management," Contemporary Long Term Care, vol. 10 (February 1987), pp. 68-69 (Coauthor).

"Medical Records, Case-Mix Payments, and PaCS," Contemporary Long Term Care, vol. 9 (March 1986), pp. 26-27.

"Reserving Nursing Home Beds," Healthcare Financial Management, vol. 40 (February 1986), pp. 34-40

"PPS for Home Health Services?", Nursing Management, vol. 16 (December 1985), pp. 16-18.

"RUGs and Medi-Cal Systems for Classifying Nursing Home Patients," Health Progress, vol. 66 (December 1985).

"Regulation of Continuing Care Retirement Communities," HealthSpan, vol. 2 (October 1985), pp. 3-10.

"Medicaid and Blue Cross DRG Payment Plans: A Comparison," Health Progress, vol. 66 (October 1985), pp. 48-56.

"Pricing of Inpatient Nursing Services," Heaith Care Financing Review, vol. 6 (Summer 1985), pp. 157-160. (Coauthor).

"PRO Objectives and Quality Criteria," Hospitals, vol. 59 (February 1985), pp. 64-67 (Coauthor).

"How Major Regulations Strive to Ensure Quality Care in Nursing Homes," Healthcare Financial Management, vol. 38 (September 1984), pp. 50-66.

"Cluster Approach Allows Budgeting, Planning with DRGs," Hospital Progress, vol. 65 (July-August 1984).

"DRG Payments and Net Contribution Variance Analysis," Healthcare Financial Management, vol. 38 (February 1984), pp. 30-37 (Coauthor).

"Utilization and Quality Review Under the Prospective Rate System," Quality Review Bulletin, vol. 10, (February 1984) pp. 30-37 (Coauthor).

"Hospice Care under Medicare," Nursing Management, vol. 15 (February 1984), pp. 17-21.

"Recent Expansions of Community-Based Long-Term Care under Medicaid," Nursing Management, vol. 15 (January 1984) pp.16-18.

"The Use of DRGs -- Selected Implications for Medical Record Departments," Journal of the American Medical Record Association, vol. 54 (February 1983) pp. 24-30 (Coauthor).

"Adjusting to Medicare DRG Indexes and Target Ceilings," Hospital Progress, vol. 64 (January 1983) pp. 42-47.

"RIMs and the Cost of Nursing Care," Nursing Management, vol. 13 (December 1982), pp. 12-26 (Coauthor).

"Measured Inflation and the Elderly, 1973 to 1981," The Gerontologist, vol. 22 (September 1982), pp. 347-352.

"DRGs and Nursing Administration," Nursing Management, vol. 13 (January 1982), pp. 30-34.

"The Burden of Health Expenditures on the Elderly," in Socioeconomic Issues of Health 1981, R. Musacchio and D. Hough eds. (Chicago, IL: American Medical Association, 1981), pp. 77-91.

"The Role of Profit in a Reimbursement Plan," American Health Care Association Journal, vol. 7 (July 1981), pp. 2-8.

"Medicaid Reimbursement of Long-Term Nursing Care," Geriatric Nursing: American Journal of Care for the Aging, vol. 2, (March/April 1981), pp. 133-138 (Coauthor).

"Inflation Factors and Nursing Home Reimbursement," Long Term Care and Health Services Administration Quarterly, vol. (Spring 1980), pp. 16-28.

"Equity and Efficiency Implication of Case-Mix Reimbursement in New Jersey," Profile of Medical Practice, 1980, G. Glendon and R. Shapiro, eds. (Chicago, IL: American Medical Association, 1980), pp. 91-105.

"The Costs of Adult Day Care and Nursing Home Care: A Dissenting View," Inquiry, vol. 16 (Summer 1979), pp. 162-165.

"A Note on the Nursing Home Industry," Journal of Economic Issues, vol. 12 (December 1978), pp. 911-921.

"Prospective Reimbursement Rates for Hospitals: Rejoiner," Quarterly Review of Economics and Business, vol. 18 (Winter 1978), pp.94-97.

"An Analysis of the Causes of Increases in Medicaid Payments, New Jersey, 1970-74," Public Health Reports, vol. 90 (November - December 1975), pp. 509-515.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WEST VIRGINIA UNIVERSITY HOSPITALS, INC.,	:	
Plaintiff,	:	
v.	:	Civil Action No. 86-0955
ROBERT CASEY, et al.,	:	
Defendants.	:	

JOINT FEE PROPOSAL

Plaintiff, West Virginia University Hospitals, Inc. (hereinafter referred to as "WVUH"), and the defendants, Robert Casey, et al., ask the Court to determine that $500,000.00 is the amount of appropriate attorneys' fees and costs that may be awarded WVUH pursuant to 42 U.S.C. § 1988. The total amount sought is attributable to $350,000.00 in attorneys' fees, $104,133.00 in expert witness fees and costs, and $45,867.00 in disbursements. In support of this fee proposal, the plaintiff and defendants state the following:

1. On July 26, 1986, WVUH commenced this action against the Governor of the Commonwealth of Pennsylvania and various other defendants pursuant to 42 U.S.C. § 1983.

2. WVUH alleged that Pennsylvania's medicaid prospective payment system as it applied to WVUH violated federal law; that Pennsylvania's medicaid administrative appeals system as it applied to WVUH violated federal law; and that WVUH's Fourteenth Amendment equal protection rights had been violated as a result of its treatment under Pennsylvania's medicaid prospective payment system.

3. WVUH sought injunctive and declaratory relief as well as reasonable attorneys' fees and costs.

4. This action was tried before the United States District Court for the Middle District of Pennsylvania on May 2, 3, 4, 5, 6 and 16, 1988.

5. This action involved complex issues of state and federal medicaid reimbursement law, detailed analysis of pertinent medicare reimbursement principles, and statutory and constitutional challenges to Pennsylvania's administrative appeals system.

6. The case dealt with certain issues that had not been litigated previously. For example, the case raised the issue of whether state medicaid reimbursement systems may properly disregard a hospital's share of low income patients who reside out-of-state when making an adjustment for hospitals serving a disproportionate share of low income persons. The case also dealt with the authority of an administrative officer under Pennsylvania law to waive or grant exceptions to properly promulgated regulations. This letter issue may have a significant effect upon Pennsylvania's system of administrative law.

7. On November 30, 1988, the District Court entered an order ruling in favor of WVUH on all significant issues and granting WVUH substantially all prospective injunctive and declaratory relief requested.

8. In its November 30, 1988 Order, the District Court granted WVUH's request for attorneys' fees pursuant to 42 U.S.C. § 1988.

9. The District Court ordered counsel for the parties to attempt to reach an agreement on the amount of WVUH's attorneys' fees.

10. The parties have reached an agreement on the amount of WVUH's attorneys' fees.

11. In connection with this action, the following attorneys worked the following numbers of hours at the following hourly rates.

Robert T. Adams

Year	Rates	Total Hours	Lodestar
6/86 - 7/87	$120.00	192.5	$ 23,100.00
8/87 - 7/88	$150.00	797.9	$119,665.00
8/88 - 11/88	$170.00	11.4	$ 1,941.00

Julia Krebs-Markrich

Year	Rates	Total Hours	Lodestar
6/86 - 7/87	$105.00	30.6	$ 3,213.00
8/87 - 7/88	$125.00	729.8	$91,209.00
8/88 - 11/88	$150.00	5.1	$ 699.00

Edward M. Macon

Year	Rates	Total Hours	Lodestar
9/87 - 5/88	$85.00	419.3	$35,640.50
6/88 - 8/88	$95.00	29.3	$ 2,783.50

Jack M. Stover

Year	Rates	Total Hours	Lodestar
5/86 - 12/87	$100.00	152.0	$15,200.00
12/87 - 12/88	$120.00	166.9	$20,028.00

James J. Kutz

Year	Rates	Total Hours	Lodestar
11/86 - 4/87	$ 75.00	7.0	$525.00
12/87 - 8/88	$ 90.00	4.9	$441.00
8/88 - 12/88	$115.00	3.9	$448.50

See Exhibits 1 & 2 for the legal services provided by Adams, Krebs-Markrich, Macon, Stover, and Kutz.

12. Adams, Krebs-Markrich, and Macon are with the law firm of McGuire, Woods, Battle & Boothe. Other lawyers, paralegals, and staff assisted in the preparation of the case. The identity of these individuals and the cost of their services are set forth in Exhibit 1.

13. Stover and Kutz are with the law firm of Shearer, Mette, Evans & Woodside. Other lawyers, paralegals, and staff assisted in the preparation of the case. The identity of these individuals and the cost of their services are set forth in Exhibit 2.

14. WVUH incurred in excess of $350,000.00 in attorneys' fees as identified in paragraphs 11, 12 and 13. After good faith negotiations, however, the parties agree that WVUH should be awarded $350,000.00 in attorneys' fees for the services of McGuire, Woods, Battle & Boothe and Shearer, Mette, Evans & Woodside. The parties further agree that $350,000.00 is a fair and reasonable amount for the services rendered by McGuire, Woods, Battle & Boothe and Shearer, Mette, Evans & Woodside, that such services were necessary, that such services were rendered in a reasonable number of hours, that the hourly rates charged by McGuire, Woods, Battle & Boothe and Shearer, Mette, Evans and Woodside were reasonable, and that WVUH actually incurred such attorneys' fees.

15. In connection with this action, the law firm of McGuire, Woods, Battle & Boothe incurred $36,293.24 in disbursements. See Exhibit 1 for a detailed explanation of disbursements incurred.

16. In connection with this action, the law firm of Shearer, Mette, Evans & Woodside incurred $9,574.38 in disbursements. See Exhibit 2 for detailed explanation of the disbursements incurred.

17. WVUH incurred $45,867.62 in disbursements as reflected in paragraphs 15 and 16 above. After good faith negotiations, however, the parties agree that WVUH should be awarded $45,867.00 for disbursements listed in paragraphs 15 and 16, above. The parties further agree that $45,867.00 is a fair and reasonable amount for such disbursements, that such disbursements were necessary, and that WVUH actually incurred such costs.

18. In connection with this action, the accounting firm of Coopers & Lybrand was hired to analyze the Pennsylvania medicaid prospective payment system, to run WVUH's statistical profile through the grouping system used by Pennsylvania to classify hospitals for medicaid reimbursement purposes, to analyze pertinent cost reports, to prepare exhibits for trial, and to testify at trial. Coopers & Lybrand's fees totalled $158,858.29. See Exhibit 3 for description of services rendered.

19. In connection with this action, Gerard F. Anderson, Ph.D., Director of Johns Hopkins University Center for Hospital Finance and Management, was hired to analyze the defendants' medicaid reimbursement system, and testify at trial as an expert witness on prospective payment systems generally and the Pennsylvania medicaid prospective payment system in particular. Dr. Anderson's fees totalled $16,217.76. See Exhibit 4 for description of services rendered.

20. WVUH incurred expert witness fees and costs in excess of $104,133.00. After good faith negotiations, however, the parties agree that WVUH should be awarded $104,133.00 in costs associated with

the services provided by Coopers & Lybrand and Dr. Anderson. The parties further agree that $104,133.00 is a fair and reasonable amount for the services rendered by Coopers & Lybrand and Dr. Anderson, that such services were necessary, and that WVUH actually incurred such costs. However, defendants to not agree that WVUH is entitled to reimbursement of expert witness fees and costs as a matter of law and defendants are filing with the court a memorandum in support of their position. WVUH will file a response to defendants' memorandum as promptly as possible, in no event to exceed seven days following receipt of defendants' memorandum.

21. Although the defendants agree that WVUH should be awarded $500,000.00 in fees and costs, that such fees and costs are fair, reasonable, and necessary, and that WVUH actually incurred such fees and costs, the defendants reserve the right to appeal the order awarding such fees and costs on any other ground that may be available.

THEREFORE, the plaintiff and the defendants respectfully request that the Court award WVUH appropriate attorneys' fees and costs in accordance with 42 U.S.C. § 1988, as outlined in this joint petition, as follows: $350,000.00 in attorneys' fees, $45,867.00 in disbursements, and, if allowable as a matter of law, expert witness fees and costs in the amount of $104,133.00.

Respectfully submitted,

WEST VIRGINIA UNIVERSITY
HOSPITALS, INC.

By: /s/ Julia Krebs-Markrich

Robert T. Adams
McGuire, Woods, Battle & Boothe
One James Center
Richmond, Virginia 23219
(804) 644-4131

Julia Krebs-Markrich
McGuire, Woods, Battle & Boothe
The Army and Navy Club Building
1627 Eye Street, N.W.
Washington, D.C. 20006

Jack M. Stover
Shearer, Mette, Evans & Woodside
1801 North Front Street
Harrisburg, Pennsylvania 17102
(717) 232-6701

ROBERT CASEY, ET AL.

By: /s/ Jerome T. Foerster

Jerome T. Foerster
Deputy Attorney General
Office of the Attorney General
Commonwealth of Pennsylvania
Strawberry Square
Harrisburg, Pennsylvania 17120
(717) 783-1471

INDEX OF EXHIBITS

1. McGuire, Woods, Battle & Boothe Billing Statements
2. Shearer, Mette, Evans & Woodside Billing Statements
3. Coopers & Lybrand Billing Statements
4. Gerard F. Anderson Billing Statements
5. Affidavit of Robert T. Adams
6. Affidavit of Julia Krebs-Markrich
7. Affidavit of James J. Kutz
8. Affidavit of Gregory M. Luce

* * *

December 7, 1988

Ms. Julia Krebs
McGuire, Woods, Battle & Boothe
Army Navy Club Building
1621 Eye Street, N.W.
Washington, D.C. 20006

Dear Ms. Krebs,

As you requested, the following is a short summary identifying the work performed for West Virginia University Hospitals, Inc. associated with its lawsuit against the Commonwealth of Pennsylvania.

The bill dated September 24, 1986 for $18,000 represented 120 hours of our time. Tasks completed included:

- Discussions to develop an understanding of the case,
- Review of prior work completed by other consultants,
- Initial work for the first financial analysis of possible lost reimbursement, and
- Initial analysis of identification of hospitals similar to WVUH in Pennsylvania.

The bill dated November 19, 1986 was for $7,500 for consulting services and $4,500 for a strategy meeting. Tasks completed included:

- Development of the preliminary grouping methodology to be used to evaluate the grouping WVUH would be if it were in Pennsylvania,

- Identification of data needed to group the hospital,
- Development of data request for WVUH,
- Strategy session at your Washington, D.C. office to develop the approach to be used in this lawsuit. Included in this meeting were WVUH representatives, the attorneys, Nelson Ford, Tom Manak, Paul Grimaldi, Jim Lowe, and Jerry Anderson.

The last bill with no detail was that dated January 21, 1987. This bill was for 88 hours and $13,200. The tasks worked on included:

- Completion of approach to the grouping,
- Calculation of the variables for the grouping run to be done by HAP,
- Development of alternative variables,
- Review of variables as required by HAP,
- Review of data completed by HAP,
- Sensitivity analysis of grouping,
- Discussions with HAP regarding approval to run the grouping, methodology, data requirements, format.

The other bills have short summaries of the areas of work completed. If you need any other additional information please call me at 312-701-6043 or Nelson Ford at 202-822-4096.

Sincerely,

Thomas J. Manak, Director
Health Care Consulting Services

September 24, 1986

Mr. Steven Pickett
Vice President Finance
West Virginia University Hospitals, Inc.
Medical Center Box 6401
Morgantown, WV 29506-6401

For services rendered in connection with the litigation support of McGuire, Woods & Battle in the lawsuit against the State of Pennsylvania through August 31, 1986.

Fees	$28,000.00
Expenses	799.42
Total	$18,799.42

Sincerely,

Nelson M. Ford
Partner
Health Care Services

UNIVERSITY OF WEST VIRGINIA HOSPITAL

HOURS ANALYSIS

Nelson Ford	8	
Tom Manak	24	
Jim Low	88	
TOTAL	120	Hours

Please return this copy
with remittance to:
Coopers & Lybrand
1800 M Street, N.W.
Washington, D.C. 20036

Mr. Steven Pickett
Vice President - Finance
West Virginia University
Hospitals, Inc.
Medical Center Box 6401
Morgantown, WV 29506-6401

November 19, 1986

For Services Rendered

For services rendered in connection with the litigation support of McGuire, Woods & Battle in the lawsuit against the State of Pennsylvania through October 31, 1986.

Consulting	$ 7,500.00
Strategy Meeting	4,500.00
Expenses	757.13
TOTAL	$12,757.13

Sincerely,

Nelson M. Ford
Partner
Health Care Services

HHf:ame
PHM

Engagement 046-9413-0060

Ref. No. 18764

OFFICE FILE 1

Please return this copy
with remittance to:
Coopers & Lybrand
1800 M Street, N.W.
Washington, D.C. 20036

Mr. Steven Pickett
Vice President - Finance
West Virginia University
Hospitals, Inc.
Medical Center Box 6401
Morgantown, WV 29506-6401

January 21, 1987

For Services Rendered

For services rendered in connection with the litigation support of McGuire, Woods & Battle in the lawsuit against the State of Pennsylvania from November 1, 1986 through December 31, 1986.

Consulting Fees	$13,200.00	(88 hours @ $150/hr)
RAP Grouping Expense	3,500.00	
Misc. Expenses	757.13	
TOTAL	$17,213.79	

Sincerely,

Nelson M. Ford
Partner
Health Care Services

HHf:ame
PHM

Engagement 046-9413-0060

Ref. No. 18804

OFFICE FILE 1

University of West Virginia Hospital

Hours Analysis 11/1/86 - 12/31/86

	11/30	12/31	Total
N. Ford	4	6	10
T. Manak	17	27	44
J. Low	12	12	24
J. Letnaunchyn	6		6
R. Deluca	4	—	4
Total	43	45	88

Please return this copy
with remittance to:
Coopers & Lybrand
1800 M Street, N.W.
Washington, D.C. 20036

Mr. Steven Pickett
Vice President - Finance
West Virginia University
Hospitals, Inc.
Medical Center Box 6401
Morgantown, WV 29506-6401

July 14, 1987

For Services Rendered

In connection with litigation support of WVUH and McGuire, Woods & Battle in the lawsuit against the Medical Assistance Program of the Commonwealth of Pennsylvania from January 1, 1987 through June 30, 1987.

Consulting Fees (58 hours @ $150/hr) (see attached detail)	$ 8,700.00
Expenses	1,561.66
TOTAL	$10,261.66

Sincerely,

Nelson M. Ford
Partner
Health Care Services

HHf:ame
PHM

Engagement 046-9413-0060

Ref. No. 25478

OFFICE FILE 1

1987 Billing Detail - West Virginia University Hospital

C&L Staff	January	February	March	April	May	June	Total
Nelson Ford		3	15		1	3	22
Tom Manak		4	18			4	26
Paul Grimaldi			8			2	10
		7	41		1	9	58
Expenses							
Travel (to Morgantown x 3)				$1,312.82			
Other Misc. (xerox, postage, phone)	$115.20	$70.04			$63.60		
	$115.20	$70.04		$1,312.82	$63.60		$1,561.66

Notes: February time for workpaper preparation and engagement management.
March time for preparation for and attendance at strategy session in Morgantown.
May time for engagement management.
June time for review of discovery documents and preliminary cost report review.

1987 Billing Detail - West Virginia University Hospital

C&L Staff	July	August	September	October	November	December	Total
Nelson Ford		3	1		2	3	9
Tom Manak	2	40	2	18	35	70	167
Paul Grimaldi			2		8	5	15
Bob Deluca					3		3
	2	43	5	18	48	78	194
Expenses							
Travel		$1,630.21			$653.80	$1,169.23	$3,453.26
Meals		34.50			34.50	24.00	93.00
Other Misc.							
(Xerox, postage,phone)					75.56	101.54	117.10
		$1,664.71			$763.86	$1,294.77	$3,723.34

Notes: Nelson Ford time for review of interrogatories and engagement management.
Tom Manak time for review of discovery documents, analysis of cost report submissions, preparation for and attendance of depositions and strategy sessions in Morgantown, Harrisburg and Washington.
Paul Gramaldi time for review of interrogatories and documents and for testimony preparation session.
Bob DeLuca time for response to questions about application of Pennsylvania MA regulations.

Please return this copy
with remittance to:
Coopers & Lybrand
1800 M Street, N.W.
Washington, D.C. 20036

Mr. David Brisell
Vice President - Legal Services
West Virginia University
Hospitals, Inc.
Medical Center Box 6401
Morgantown, WV 29506

January 25,1987

For Services Rendered

In connection with litigation support of WVUH and McGuire, Woods & Battle in the lawsuit against the Medical Assistance Program of the Commonwealth of Pennsylvania from July 1, 1987 through December 31, 1987.

Consulting Fees		
194 hours at $150.00/hr.		$29,100.00
(see attached detail)		
Expenses		
Travel and subsistence	3,453.24	
Meals	93.00	
Other	177.10	
TOTAL		$32,823.24

Sincerely,

Nelson M. Ford
Partner
Health Care Services

HHf:bs

Engagement 046-9413-0060

Ref. No. 28228

OFFICE FILE 1

Mr. David Brisell
Vice President - Legal Services
West Virginia University
Hospitals, Inc.
Medical Center Box 6401
Morgantown, WV 29506

Please return this copy
with remittance to:
Coopers & Lybrand
1800 M Street, N.W.
Washington, D.C. 20036

April 22,1987

For Services Rendered

In connection with litigation support of WVUH and McGuire, Woods & Battle in the lawsuit against the Medical Assistance Program of the Commonwealth of Pennsylvania from January 1, 1988 through March 31, 1988.

Consulting Fees	
130 hours at $150.00/hr. (see attached detail)	$19,500.00
Expenses	
Travel and subsistence	1,835.75
Meals	54.50
Other	46.91
TOTAL	$21,437.16

Sincerely,

Nelson M. Ford
Partner
Health Care Services

HHf:bs

Engagement 046-9413-0060

Ref. No. 22209

OFFICE FILE 1

1988 Billing Detail - West Virginia University Hospital

C&L Staff	January	February	March	Total
Nelson Ford	3		4	7
Tom Manak	34	3	11	48
Paul Grimaldi	7	20	16	43
Mike Weaver	16	16		32
	60	39	31	130
Expenses				
Travel	$691.60	$261.93	$882.22	$1,835.75
Meals	13.50	36.50	4.50	54.50
Other Misc.	15.00	15.25	16.66	46.91
	$720.10	$313.68	$903.38	$1,937.16

Notes: Nelson Ford time for engagement management.

Tom Manak time for review of discovery documents, analysis of cost report submissions, preparation for and attendance of depositions and strategy sessions in Morgantown, Harrisburg and Washington.

Paul Grimaldi time for review of interrogatories and documents and for testimony preparation session.

Mike Weaver time for assistance in preparation of exhibits.

Mr. David Brisell
Vice President - Legal Services
West Virginia University
Hospitals, Inc.
Medical Center Box 6401
Morgantown, WV 29506

Please return this copy
with remittance to:
Coopers & Lybrand
1800 M Street, N.W.
Washington, D.C. 20036

July 15,1988

For Services Rendered

In connection with litigation support of WVUH and McGuire, Woods & Battle in the lawsuit against the Medical Assistance Program of the Commonwealth of Pennsylvania from April 1, 1988 through June 30, 1988 including preparation for and attendance at trial.

Consulting Fees	
286 hours at $150.00/hr. (see attached detail)	$42,900.00
Expenses	
Travel and subsistence	2,179.11
Meals	417.41
Other	69.37
TOTAL	$45,565.89

Sincerely,

Nelson M. Ford
Partner
Health Care Services

HHf:bs

Engagement 046-9413-0060

Ref. No. 22245

OFFICE FILE 1

1988 Billing Detail - West Virginia University Hospital

C&L Staff	April	May	June	Total
Nelson Ford	3	4	1	8
Tom Manak	50	86	2	138
Paul Grimaldi	32	57	2	91
Mike Weaver	20	7		27
Mike Maher		22		22
	105	176	5	286
Expenses				
Travel/Hotel		$2,179.11		$2,179.11
Meals		417.41		417.41
Other Misc.	$31.25	32.96	$5.16	$ 69.37
	$31.25	$2,629.48	$5.16	$2,665.89

Notes: Nelson Ford time for engagement management and work product review.

Tom Manak time for review of discovery documents, analysis of cost report submissions, preparation of exhibits and preparation and delivery of testimony at trial.

Paul Grimaldi time for preparation and delivery of testimony at trial.

Mike Weaver time for preparation and delivery of testimony at trial.

Mike Weaver time for assistance in preparation of exhibits.

THE CENTER FOR HOSPITAL FINANCE AND MANAGEMENT
THE JOHNS HOPKINS MEDICAL INSTITUTIONS
624 North Broadway Baltimore, Maryland 21205 (301) 955-2300

DATE: May 11, 1988

SUBJECT: West Virginia Case

INVOICE

MILEAGE:	458 mi../22.5 cents/mi.	$103.05
PARKING:	5/2/88	5.00
	5/3/88	7.00
	5/4/88	7.00
HOTEL:	4/30 - 5/5/88	$595.71
TOTAL:		$717.76

Please make check payable to:
Gerard F. Anderson, Ph.D.
055-38-3864

Please mail check to:
Gerard F. Anderson, Ph.D
Director
Johns Hopkins University
Center for Hospital Finance and Management
Hampton House, Room 300
624 N. Broadway
Baltimore, MD 21205

THE CENTER FOR HOSPITAL FINANCE AND MANAGEMENT
THE JOHNS HOPKINS MEDICAL INSTITUTIONS
624 North Broadway Baltimore, Maryland 21205 (301) 955-2300

INVOICE

Date: March 1, 1988

Case: West Virginia University Hospitals, Inc.
vs.
Robert P. Casey, et al

Labor Hours: Analysis of State's Depositions
4.5 hours @ $150/hour
Total: $675.00

Make Check Payable To: Gerard F. Anderson
055-38-3864

Mail Check To: Gerard F. Anderson
Center for Hospital Finance and Management
Hampton House, Room 300
624 N. Broadway
Baltimore, MD 21205

THE CENTER FOR HOSPITAL FINANCE AND MANAGEMENT
THE JOHNS HOPKINS MEDICAL INSTITUTIONS
624 North Broadway Baltimore, Maryland 21205 (301) 955-2300

DATE: May 10, 1988

SUBJECT: West Virginia Case

INVOICE

Preparation for Trial:	20 hours $150/hr	$ 3,000
Trial:	70.5 Hours	$10,575
Computer Analysis of Johns Hopkins Hospital Medicaid Patients		$ 1,250
TOTAL:		$14,825

Please make check payable to:

Gerard F. Anderson, Ph.D.
Director
Johns Hopkins University
Center for Hospital Finance and Management
Hampton House, Room 300
624 N. Broadway
Baltimore, MD 21205

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Filed March 12, 1990

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 89-5165

WEST VIRGINIA UNIVERSITY HOSPITALS, INC.

v.

ROBERT CASEY, Governor, Commonwealth of Pennsylvania; JOHN WHITE, Secretary, Department of Public Welfare; DAVID S. FEINBERG, Director, Office of Medical Assistance; THE DEPARTMENT OF PUBLIC WELFARE,

Appellants

Submitted December 5, 1989
Before: BECKER, STAPLETON, and ROSENN, Circuit Judges
OPINION FILED March 12, 1990

ERNEST D. PREATE, JR., Attorney General
JEROME T. FOERSTER, Deputy Attorney General
CALVIN R. KOONS, Senior Deputy Attorney
JOHN G. KNORR, III, Chief Deputy Attorney General
Chief, Litigation Section
Office of Attorney General
Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120
Attorneys for Appellants

ROBERT T. ADAMS, ESQ.
THOMAS J. STALLINGS, ESQ.
McGuire, Woods, Battle & Boothe
One James Center
Richmond, VA 23219

JULIA KREBS-MARKRICH, ESQ.
McGuire, Woods, Battle & Boothe
The Army & Navy Club Building
1627 Eye Street, N.W., Suite 1000
Washington, D.C. 20006

JACK M. STOVER, ESQ.
Mette, Evans & Woodside
1801 North Front Street
P. O. Box 729
Harrisburg, PA 17108-0729
Attorneys for Appellees

SUR MOTION FOR ATTORNEYS' FEES AND COSTS

ROSENN, Circuit Judge.

On July 6, 1986, West Virginia University Hospitals, Inc. (WVUH or the Hospital) commenced an action against the Governor of the Commonwealth of Pennsylvania and various other officials (the State) pursuant to 42 U.S.C. §1983. In the action WVUH sought injunctive and declaratory relief invalidating the out-of-state aspects of Pennsylvania's hospital reimbursement program, as well as reasonable attorneys' fees, including expert witness fees, and costs. WVUH claimed that Pennsylvania's medicaid prospective payment system as it applied to the plaintiff violated federal law. The litigation dealt with certain issues which had not been previously litigated and involved complex issues of state and federal medicaid reimbursement law and statutory and constitutional challenges to Pennsylvania's administrative system. On November 30, 1988, the district court entered an order in favor of the Hospital on all significant issues and awarded WVUH substantially the prospective relief requested, as well as attorneys' fees (including expert witness fees) and costs.

Subsequent to that litigation, WVUH applied to the district court for attorneys' fees and following negotiations the parties agreed on the sum of $350,000, which the court approved. The defendants filed a timely appeal with this court vigorously challenging the major aspects of the district court's decision. After oral argument and review of the briefs and record, we rendered our decision on September 5, 1989, affirming the district court's judgment that Pennsylvania's medicaid prospective system as applied to plaintiff violated federal law, but reversing the district court's declaration that Pennsylvania's administrative appeals system as it applied to WVUH violated federal law and the award of retroactive relief. We also vacated the award for expert witness fees insofar as it allowed a sum in excess of thirty dollars per day. We denied WVUH's petition for rehearing.

Based on our decision, we now have before us the Hospital's application as amended for attorneys' fees in the sum of $132,737.47 and $7,394.37 in disbursements in connection with the appeal to this court. The State opposes the application with numerous objections which, although they do not raise the request for fees and costs to the same level of complexity as the underlying litigation, nonetheless present the trappings of major litigation. We grant the motion in part.

I.

WVUH claims that it is entitled to the fees requested before this court because it prevailed on the appeal within the meaning of 42 U.S.C. §1988. It asserts that the essential question in its lawsuit and on appeal was whether Pennsylvania's medicaid prospective payment system, as it applied to WVUH, complied with federal law. It prevailed in the resolution of this issue in both the district court and on appeal in this court. WVUH acknowledges that we reversed the district court's determination declaring invalid the legality and adequacy of Pennsylvania's administrative appeals system as well as the district court's award of relief retroactive to the filing of the lawsuit. West Virginia University Hosp., Inc. v. Casey, 885 F.2d 11 (3d Cir. 1989). We also vacated the district court's decision allowing expert witness fees of $104,103.00 under 42 U.S.C. §1988. The Hospital, however, contends that the administrative appeals issue "is subordinate to the central issue" concerning the legality and adequacy of the prospective payment system, and the expert witness fee issue is tangential to the substantive claim concerning the legality and adequacy of Pennsylvania's medicaid prospective system, and arose solely from the question of the total amount of attorneys' fees to be awarded. The Hospital maintains that it has protected its essential legal rights, "will obtain major and permanent changes in Pennsylvania's reimbursement practices," and has thus obtained the "primary relief" it sought. WVUH therefore concludes that it is the prevailing party for purposed of 42 U.S.C. § 1988 and is entitled to all of the attorneys' fees and disbursements requested on the appeal to this court and in connection

with earlier efforts to enforce compliance with the judgment of the district court.

The State, responding to the Hospital's application, has raised numerous objections. They may be summarized as follows:

(1) WVUH is not entitled to attorneys' fees in the sum requested because on appeal it lost on "three significant issues"· the administrative appeals issue, the retroactivity issue, and the expert witness fees issue. Therefore, the State contends the request for fees should be reduced by seventy-five percent.

(2) This court may not award fees on a direct motion to this court for WVUH's efforts to enforce compliance with the district court's judgment because those services were not rendered in the court of appeals. Specifically, the State challenges fees for WVUH's unsuccessful Rule 70 motion in the district court and for WVUH's efforts to enforce compliance with the district court judgment.

(3) No award should be made for items that represent an unnecessary duplication of effort by multiple counsel.

(4) No award can be made for numerous items of alleged service when the individual entries in the plaintiffs' supporting exhibits lack necessary specificity.

(5) Miscellaneous items of disbursement for telephone, duplicating, and other office expenses were either unnecessary or excessively expensive.

II.

The major issue before us pertains to the State's request for a reduction of attorney's fees under the principles enunciated in Hensley

v. Eckerhart, 461 U.S. 424 (1983), because the plaintiff, WVUH, did not prevail on all the issues raised on appeal. In Hensley, the Supreme Court held that courts must assess the claims advanced and the results achieved by the prevailing party when determining what is a "reasonable" attorney's fee under 42 U.S.C. §1988. Under Hensley, attorneys are not to be compensated for time spent on claims which are unrelated to successful claims. Id. at 435. However, "where a lawsuit consists of related claims, a plaintiff should not have his attorney's fees reduced simply..." because some related claims are unsuccessful. Id. at 440. The court must consider whether the results obtained by the prevailing party justify an award of attorney's fees for hours spent on related but unsuccessful claims. Hensley at 435. When the relief obtained is excellent, the prevailing party may recover fees for "all hours reasonably expended on the litigation." Id. at 436. If the prevailing party does not obtain substantial but only partial relief, a full award of fees for all hours spent on related, unsuccessful claims would be excessive. Hensley at 440.

There can be no doubt that the central issue on appeal, as it was in the district court, was whether Pennsylvania's formulation for reimbursing out-of-state hospitals for their inpatient services to Pennsylvania medicaid recipients violated federal statutory and regulatory law. WVUH prevailed on this issue. The plaintiff argues that the claims in this appeal are related because they emanate from a common core of facts and are base don related legal theories. It asserts that each of the claims raised on appeal cannot be reasonably viewed as "distinct in all respects" from the central issue in the case and it is, therefore, entitled to a full compensatory award. Not surprisingly, the defendants have a different perspective of the Hospital's case. They contend that the issue on which WVUH prevailed was separate and distinct from the claims it lost on appeal. Although the State concedes that all of the issues may have been intertwined at the district court level, that was not the situation before this court. Having prevailed on only one of four issues, the State concludes that the Hospital's fee award should be reduced by seventy-five percent.

Regrettably, except for conclusory statements, neither of the parties provides us with any assistance in determining whether the claims are related or are separate and distinct from the principal claim on which WVUH prevailed. One useful "starting point for separating an unrelated, unsuccessful claim from a related unsuccessful claim is to determine whether a particular unsuccessful claim shares a "common core of facts" with the successful claim or is based on a "related legal theory." Hensley, 461 U.S. at 435. The Court in Hensley also instructs us to interpret "related claims" broadly. Nonetheless, when the plaintiff has not prevailed on a claim "that is distinct in all respect from his successful claim," time spent on the unsuccessful claim "should be excluded in considering the amount of a reasonable fee." Hensley at 440. With these principles in mind, we address the claims which were advanced unsuccessfully by WVUH on appeal.

III.

A. The Administrative Appeals Issue

On appeal, WVUH lost on its claim concerning the legality of Pennsylvania's administrative appeals system and appropriately asserts that this claim is subordinate to the central issue, the legality and adequacy of the prospective payment system. The defendants assert that both parties considered the issue significant because it related to the district court's grant of retroactive relief. The immediate consideration before us, however, is not so much whether the claim is subordinate, but whether it is related to the successful claim for relief.

Whether the Pennsylvania administrative appeals issue is related to WVUH's attack on the alleged violations of Title XIX of the Federal Medicaid Act may be a close question. However, we conclude that the relationship, if any, is remote and that the issue is discrete. WVUH argues that a relationship exists between the two issues because a successful challenge to the administrative appeals system might have opened an avenue for alternative relief. We reject this argument.

We see the factual matrix to the legality of Pennsylvania's administrative appeals system as totally different from the successful challenge to the validity of Pennsylvania's hospital reimbursement program for medicaid services. Pennsylvania's reimbursement plan and its statutes and regulations setting up an administrative appeals system deal with different subjects. The first sets up a specific medical assistance and reimbursement program; the latter creates a state procedural structure applicable to the administrative appeals generally within the Commonwealth. The legal theory and analysis pertaining to each is different. The issue involve two different aspects of the administration of the Commonwealth's medicaid program, governed by different provisions of the Federal Medicaid Act. In essence, we are asked to construe two different statutes, each treating totally different subjects. We therefore reject the plaintiff's claim that it is entitled to a fee amount with respect to its unsuccessful administrative appeals issue. In our judgment, a 15 percent disallowance of the fee requested on the appeal, excluding services pertaining to the post-argument brief which were unrelated to the issue, is reasonable. In our computation, infra, for the attorneys' fees allowance on appeal, we will deduct 15 percent, excluding services pertaining to the post-argument brief.

B. The Retroactivity and Eleventh Amendment Issue

The district court awarded relief retroactive to the day WVUH commenced its lawsuit against the defendants. We reversed and instead ordered relief from the date of the court's initial judgment. The State's position is that this issue was of great significance to it and to WVUH, requiring significant time and effort from WVUH, and that the services the Hospital devoted to this issue should not be compensated. However, we will not dwell long on this issue because obviously the date the relief commences is directly related to WVUH's principal claim; the retroactivity claim had a direct effect on the claim for damages.

Given the relatedness of the retroactive claim to WVUH's successful claims, the court's "rejection" of WVUH's retroactive claim "is not a sufficient reason" for reducing its attorneys' fees. Hensley at

435. On the contrary, we are to assess the appropriateness of a fee award by "focus[ing] on the significance of the overall relief obtained by the plaintiff." Id. The Hospital's retroactive claim was related to the principal issue upon which it obtained substantial relief. Therefore, we exercise our discretion and award attorney's fees for all hours reasonably spent on the retroactive claim. See Hensley at 437. The State's contention that the plaintiff is not entitled to a fee award with respect to this issue is rejected.

C. Expert Witness Fees

Although the defendants stipulated that WVUH's experts were indispensable to their case, the plaintiff claimed and obtained in the district court an award of expert witness fees in the sum of $104,133.00. The State argued, on appeal, as they did in the district court, that the amount of expert witness fees allowed improperly exceeded the statutory maximum of thirty dollars per day under 28 U.S.C. §1821(b). We reluctantly concluded that the defendants were correct and vacated the district court's judgment awarding attorneys' fees insofar as it awarded WVUH expert witness fees in excess of thirty dollars per day.

In its application for attorneys' fees in this court, WVUH describes this issue of expert witness fees as "tangential" to its principal claim. Although WVUH concedes that this issue "is arguably unrelated to the claims presented," it asserts that it should prevail on this issue too because the issue is directly related to the overall request for reimbursement of attorneys' fees. We disagree. We believe that the matter of the sum to be awarded as expert witness fees under 42 U.S.C. §1988 is an issue separate and distinct from the primary issue on which the plaintiff prevailed and thus "unrelated" to it. Of course, the claims for expert witness fees arise out of this litigation, but this does mean that they are per se directly related to the primary legal issue on which the plaintiff prevailed.

Whether expert witnesses are limited in their claim for fees to thirty dollars per day as provided by statute or may claim fees in a section 1983 suit without regard to the statutory limitations contained in 28 U.S.C. §1821(b) is a matter not related at all to the plaintiff's legal challenge to Pennsylvania's medicaid payment system. How much is to be paid an expert witness is common to any civil suit in which expert witnesses are called, and it has no special bearing on the principal issue on which the plaintiff prevailed. The plaintiff's claim for attorneys' fees for services pertaining to this issue will therefore be rejected.

The burden of proving entitlement to reimbursement is upon the applicant. It is difficult to ascertain the precise number of hours and services performed on this issue from the exhibits attached to plaintiff's application, notwithstanding the more than 800 bookkeeping entries set forth therein. The State would have us simply make a mathematical deduction of 25 percent of the fees claimed because WVUH lost on this one of four issues. We think this is too simplistic and unrealistic. We have taken what we regard as a more pragmatic approach. We have noted that plaintiff's counsel spent a certain amount of time and effort in researching the issue in the district court in connection with the application for attorney's fees and expert witness fees in that court. This reduced the amount of time required in researching and briefing the issue in this court. The question was not complex and although the amount of witness fees requested exceeded $100,000, the issue was the most subordinate of those presented on appeal. In our judgement, a ten percent disallowance of the fee requested on the appeal, excluding services pertaining to the post-argument brief which had nothing to do with this issue, is reasonable. In our computation infra for the attorneys' fees allowance on appeal, excluding services in connection with the post-argument brief, we will deduct ten percent.

D. Services to Enforce Compliance with the District Court's Judgment

The plaintiff has also submitted to this court a request for a fee award combining a large variety of services it represents was performed in implementing the judgment of the district court, including preparation for and meeting with Pennsylvania medicaid officials, analysis of the Pennsylvania State Plan Amendment submitted to the United States Department of Health & Human Services, preparation of a brief in opposition to the application to the district court for a stay pending appeal, preparation of a Rule 70 motion and supporting brief with the district court to enforce its judgment. Although the State does not object to the hourly rate claimed for each lawyer, it challenges the number of hours claimed and expenses incurred because those services were not involved in the appeal to this court.

An appellate court is not in a position to review a dispute with respect to post-judgment legal or related services performed in the district court, or with respect to the enforcement or implementation of that court's judgment unless the district court has made the requisite findings of fact. It would be highly presumptuous and far from prudential for an appellate court acting on a motion for fees relating to an appeal before it to also adjudicate disputed issues of fact on matters not involved in the appeal, and on which the district court had no opportunity to pass judgment.

The district court entered its memorandum opinion and order on November 30, 1988. However, final judgment was not entered until January 31, 1989. Nonetheless, commencing on November 30, 1988, with an entry of $120 charge for a telephone call relating to the district court's decision, fees and costs are requested throughout the numerous entries in plaintiff's exhibits 1 and 2 for services not relating to the appeal in this court. In fact, a considerable sum is even requested for services and expenses in connection with the request for attorneys' fees in the district court and the joint stipulation ultimately reached in connection therewith. Also, attorneys' fees are requested for conferences with the Pennsylvania Department of Welfare, and expenses related thereto. We obviously have no way of assessing

whether these services and expenses were required, are reasonable, and whether they were compensated in the fee award made by the district court. For example, an item on December 12, 1988, requesting $450 in attorneys' fees for a telephone call between plaintiff's attorney, Ms. Krebs-Markrich, and other counsel appears to relate to the fee proposal in the district court.

Only the district court is in a position to know whether any of the services for which compensation is sought here were included in the stipulated fees allowed by it of $350,000. If an evidentiary hearing must be conducted as to the other items sought in enforcing the judgment, the district court should conduct it and make the necessary findings. We see no plausible basis for this court to adjudicate these disputed claims and we will not pass upon them. We have reviewed each of the cases cited by the plaintiff, namely Burke v. Guiney, 700 F.2d 767 (1st Cir. 1983); Northcross v. Board of Educ., 611 F.2d 624 (6th Cir. 1979); cert. denied, 447 U.S. 911 (1980); and Prandini v. National Tea Co., 585 F.2d 47 (3d Cir. 1978). None of these cases provides us with any precedent to support the award requested. Furthermore, WVUH did not prevail on its Rule 70 motion in the district court.

We are optimistic that in light of the ability and skill of counsel for the parties to agree upon a fair sum for attorneys' fees in the much larger claim for trial fees in the district court, they will reach an agreement with respect to attorneys' fees for the post-judgment services rendered without the need to invoke an evidentiary hearing in the district court.

E. Duplication of Effort by Multiple Counsel and Unnecessary Services

The State objects to $11,121.50 requested in fees by plaintiff on the ground that these services were duplicative and unnecessary. The plaintiff counters by asserting that given the complexity of the issues and the size of the record, it was not unreasonable to have the two

principal attorneys from Virginia present at the oral argument. WVUH also notes that due to our expedition of the briefing and oral argument, counsel for WVUH had less time than usual to prepare for argument, and, therefore, had divided the work on appeal. Furthermore, it asserts that local counsel were necessary because of their familiarity with practice before this court.

It seems that an extraordinary amount of time was consumed by appellee's counsel in the preparation of an appellate brief pertaining to a case which they had tried, researched, and briefed in the district court. Furthermore, the appellant's had the laboring oar in framing the issues on appeal and preparing the appendix. Nonetheless, we are unable to say that multiple counsel were unnecessary or that the hours consumed were unreasonable. We did order expedited briefing and oral argument; the issues were complex.

On a prior occasion we noted the thin line that may exist between a reasonable and unreasonable expenditure of time in pursuit of a client's cause. We also reminded counsel that members of the bar are officers of the court and that they should demonstrate the same level of billing judgment and sensitivity in fee shifting situations as they do with their own private clients.

> The courts frequently must rely not only upon the accuracy of the record keeping but upon the intellectual honesty of counsel in the allocation of hours worked and in the measurement of time. Lawyers must therefore exercise care, judgment, and ethical responsibility in the delicate task of billing time and excluding hours that are unnecessary. Such consideration may not be abandoned because fee responsibility is shifted under 42 U.S.C. §1988.

Hall v. Borough of Roselle, 747 F.2d 838, 841-42 (3d Cir. 1984). In the absence of evidence to the contrary, we choose to believe that counsel were intellectually honest with the court and their opponents and properly allocated the hours worked and the measurement of time.

With respect to the presence of multiple counsel at oral argument, we think that more than two counsel was unnecessary. In addition to Mr. Adams, who argued the appeal for WVUH, perhaps one additional lawyer may have been necessary in an appeal of this complexity at oral argument to assist and to refer to the record of briefs. We will allow fees for the two principal attorneys present at oral argument, Adams and Krebs-Markrich.

As to the presence of local counsel at oral argument, we do not believe that the rules of practice of the Third Circuit are so unique or dissimilar from the rules of the Fourth Circuit, where the principal counsel have their office, as to also require the presence of local counsel. Furthermore, Mr. Adams and his partner appropriately familiarized themselves with the rules of this court. We will allow a reasonable amount for this purpose. However, they have charged what appears to be approximately seven hours of time aggregating $1,190.00 for familiarizing themselves with our court rules in connection with filings and oral argument. We believe that seven hours for seasoned and experienced counsel to familiarize themselves with our appellate rules are grossly excessive. We will allow $300.00. Under the circumstances, we see no reasonable basis for the additional presence of local counsel at oral argument in this court. The sum of $400.00 requested in fees for local counsel at oral argument and $277.73 for his lodging and expenses will be disallowed.

The State also objects to charges by Attorneys Adams, Krebs-Markrich, and Stover relating to meetings with the Pennsylvania Department of Public Welfare in Harrisburg, Pennsylvania, on the grounds that the charges are duplicative and there was no need for more than one attorney for this purpose. We do not reach this issue because we have already rejected these items because the services were not relevant to the appeal in this court.

At oral argument, the court requested counsel for WVUH to supplement their brief with a memorandum on the standing of the Hospital to seek relief under 42 U.S.C. §1983 for violation of the

Social Security Act governing hospital reimbursement and whether the eleventh amendment barred retroactive relief from the date of filing the lawsuit. We are able to identify 138.10 hours in plaintiff's exhibit as time spent on the post-argument brief. These hours include cite checking, instant citing, reviewing, and editing. The total fee request for this time is $17,423.00. Although these charges seem high, and as many as three lawyers charged for services performed on the same day, we cannot say that these services were duplicative or unnecessary. Counsel were under time constraints to submit the brief after oral argument and it is understandable that under such circumstances more than one lawyer might be engaged at the same time in the research and drafting. Furthermore, the issues addressed were very complex, involved extensive research and the study of numerous cases. The request for fees for the post-argument briefing will be allowed.

F. Miscellaneous Items Of Disbursement
for Telephone, Duplicating and Other
Office Expenses

The State contends that the plaintiff seeks payment for courier travel to pick up and deliver documents when the United States mails should have been used. Plaintiff responds that it utilized hand delivery to give sufficient preparation time because the court ordered expedited briefs and oral argument, and to ensure compliance with mandatory deadlines. We assume that as officers of the court, counsel will not unnecessarily incur useless expense in courier services if mail services will suffice merely because costs are being shifted. Under the circumstances, we cannot say that the use of courier service in the filing of the principal briefs and appendix in this court was unreasonable. The objection to this charge will be denied. However, we do not believe that the State should bear courier charges for the filing of the post-argument brief or other documents in this court. Although there were some time constraints, the court allowed plaintiff twice as much time (one month) for its supplemental memorandum as the State and we see no need for the use of courier service for the filing of the post-argument brief or other documents when overnight federal express service would have sufficed.

As for telephone, duplicating, and word processing expenses, the State claims that these charges are components of the lawyers' hourly rate. Long distance telephone calls are ordinarily not office overhead and the State offers no authority or plausible argument that they should be so regarded. Photocopying, like long distance calls, is not customarily regarded as overhead and is part of the reasonable attorneys' fee allowed by the Civil Rights Attorneys' Fee Award Act. See Heiar v. Crawford County, 746 F.2d 1190, 1203 (7th Cir. 1984), cert. denied, 472 U.S. 1027 (1985). Similarly, we believe that they are also allowable under 42 U.S.C. § 1988.

Unfortunately, we are unable to determine whether the photocopying and long distance calls pertain to matters in the district court or this court. In fairness to the prevailing party, we struggled to ascertain from the record, whenever possible, whether charges were related to matters before this court. The applicants, however, did not provide adequate information. Nonetheless, reasonable inferences were made in favor of the appellees even when we were not totally positive that charges were related to the appeal. However, we can make no inference from bare descriptions of "long distance" or "xeroxing," particularly when we are aware that the prevailing party was, throughout the relevant time period, engaged in other matters unrelated to the appeal in this court, e.g., negotiations with the Pennsylvania Department of Public Welfare. Therefore, virtually all of the claims for photocopying and telephone calls will be denied.

As for the numerous word processing charges, word processing in the modern law office is an accepted technology and considered indispensable for effective and efficient office service. For the most part, word processing has supplanted the typewriter and is considered an indispensable piece of office equipment in an efficient, up-to-date law office. Like the typewriter in its time, word processing equipment today expedites the work of the secretary and accelerates the productivity of the law office. It is a depreciable piece of equipment that serves the convenience and efficiency of the lawyer and appropriately may be regarded as part of the lawyer's overhead. Word

processing services are generally regarded as an overhead component of a lawyer's fee. We need not, however, decide the question in this case "because the fee application fails to adequately document that such fees are in line with community practice as required by Blum v. Stenson, 465 U.S. 897 at n. 11." In Re Olson, 884 F.2d 1415, 1427 (D.C. Cir. 1989). We will, therefore, disallow the word processing charges claimed in connection with this appeal.

G. Items Lacking Specificity

The State contends that WVUH has failed to submit sufficient detail for many charges to enable the court to determine the time spent on the claims in which plaintiff did not prevail and to otherwise inform the court whether the time spent is excessive or otherwise unnecessary. The State further asserts that where the documentation is inadequate to disclose the subject matter of the activity, the hours claimed may not be compensated. Although we do not require absolute precision in a fee reimbursement petition, we do require "some fairly definite information as to the hours devoted to various general activities." Pawlak v. Greenawalt, 713 F.2d 972, 978 (3d Cir. 1983), cert. denied, 464 U.S. 1042 (1984). On occasion we have disallowed requests for fees when the fee petition inadequately documented the hours claimed. Rode v. Dellarciprete, slip op. (3d Cir. Jan 4, 1990).

As already noted, the application for fees and expenses contain in excess of 800 bookkeeping entries. The objections on the ground of non-specificity concern hundreds of these entries, some as minuscule as fifteen cents for photocopying. A court expects, especially in a case where counsel reasonably anticipates that fees will be shifted to the non-prevailing party, that the court will be provided with sufficient supporting data to intelligently make an award. "To inform and assist the court in the exercise of its discretion, the burden is on the fee applicant to produce satisfactory evidence -- in addition to the attorney's affidavits --," Blum v. Stenson, 465 U.S. 886, 896, n. 11 (1983), adequately supporting the nature of the charge, even assuming its reasonableness.

Regrettably, after wading through hundreds of entries in search of the necessary supporting information in this application, we find numerous entries have little to offer to pass judgment upon them. Moreover, many of the objections are to items which we have already rejected because they are irrelevant to the appellate proceedings in this court. We believe that the pragmatic approach to the resolution of these objections is to focus only on the items that are sufficiently identified and related to the appeal proceedings in this court. We have given the plaintiff the benefit of all reasonable inferences. Nonetheless, there still remain many items which cannot be sufficiently identified to be allowed.

H. The Fee Application

Plaintiff is also entitled to a reasonable fee in connection with the application for fees in this court and in defending such application. Although WVUH has not provided us with any independent supporting information, we have reasonable familiarity with the services rendered and we have carefully reviewed the application, answers, and briefs, and the hourly rate of counsel. We therefore conclude that we can determine the fees to be allowed. We have modified the sum, however, because the applicant has only been partially successful in its application. The sum of $2,250.00 will be allowed.

IV.

In summary, the fee application before us is logically divisible into three phases of services: first, preparation, briefing, and oral argument on the appeal; second, the submission of the post-argument briefing requested by this court; and third, the fee application to this court. WVUH is entitled as the prevailing party on the central issue on the appeal to reasonable attorneys' fees for services rendered in connection with it. The services rendered on this issue were excellent. It is also entitled to reasonable attorneys' fees and expenses on the subordinate issues related thereto, notwithstanding that it did not prevail on them. The court will not award fees or expenses for WVUH's efforts to

enforce compliance with or to implement the district court's judgment, including activities in connection with its Rule 70 motion to enforce sanctions. Fees for services will not be awarded that represent any unnecessary duplication of effort by counsel or for disbursements that are unsupported by adequate information. Telephone, photocopying, and word processing expenses will be disallowed. Services pertaining to the claim for expert witness fees are unrelated to the issue on which the plaintiff prevailed. Plaintiff's claim for attorneys' fees in connection with the fee application will be allowed in the sum of $2,250.00.

Accordingly, WVUH's application as amended for attorneys' fees will be allowed as follows:

1.	To McGuire, Woods, Battle & Boothe for the first and principal phase of the appeal	$ 38,809.00
	Less excess time for study of Third Circuit Rules	- 890.00
	SUBTOTAL	$ 37,919.00
	Less 15% for administrative appeals issue	- 5,687.85
	Less 10% for expert witness fee issue	- 3,791.90
	ADJUSTED ALLOWANCE	$ 28,439.25
	To Mette Evans and Woodside for phase one of the appeal	$ 3,924.00
	Less time spent at oral argument	- 400.00
	SUBTOTAL	$ 3,524.00

	Less 15% for administrative appeals issue	- 528.60
	Less 10% for expert witness fee issue	- 352.40
	ADJUSTED ALLOWANCE	$ 2,643.00
2.	To McGuire, Woods, Battle & Boothe for phase two of the appeal, the post-argument briefing	$16,330.00
	To Mette Evans and Woodside for phase two	1,923.00
3.	For the third phase, fee application	$ 2,250.00
4.	Allowance for Expenses:	
	To McGuire, Woods, Battle & Boothe	$ 164.80
	To Mette Evans and Woodside	$ 305.00

The foregoing award of attorneys' fees and expenses is made without prejudice to plaintiff's right to make supplemental application to the district court for reasonable fees and expenses to which it may be entitled in the post-judgment phase in that court.

A True Copy:

Teste:

Clerk of the United States Court of Appeals
for the Third Circuit